

ALICE'S
ADVENTURES IN
JURISPRUDENCIA

Peter F. Sloss



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“The question is,” said Alice, “whether you *can* make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master—that’s all.”

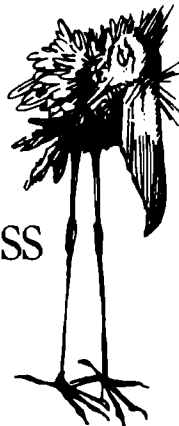
Lewis Carroll, *THROUGH THE LOOKING GLASS*

If words had absolute and constant referents, it might be possible to discover contractual intention in the words themselves and in the manner in which they were arranged. Words, however, do not have absolute and constant referents.

“A word is a symbol of thought but has no arbitrary and fixed meaning like a symbol of algebra or chemistry”

California Chief Justice Traynor in *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33 (1968)

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Alice's Adventures in Jurisprudencia

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PREFACE

In Chapter 6 of *Through the Looking Glass*, Alice and Humpty Dumpty engage in the following dialogue:

“‘When *I* use a word,’ Humpty Dumpty said, in a rather scornful tone, ‘it means just what I choose it to mean—neither more nor less.’

“‘The question is,’ said Alice, ‘whether you *can* make words mean so many different things.’

“‘The question is,’ said Humpty Dumpty, ‘which is to be master—that’s all.’”

Like Lewis Carroll’s famous characters, lawyers and judges are preoccupied much of the time with the meaning of words. Some years ago, while reading a decision by the California Supreme Court which discussed how a court should determine the meaning of a contract, I was struck with the thought that the question before the Court was the same question that Alice posed to Humpty Dumpty. This story flowed naturally from this simple observation.

The adventures of Alice depicted in the pages that follow are a fantasy, and the reader should not assume that

the laws of the imaginary kingdom of Jurisprudencia, which Alice visited in a dream, are anything like the laws of any real state or nation. However, lest I be accused of plagiarism, I freely confess that, just as I have borrowed the characters from the writings of Lewis Carroll, I have borrowed some of the legal reasoning espoused by Humpty Dumpty, Lord Chief Justice of Jurisprudencia, and others from utterances of real American judges.

In case any reader should be interested in the sources, there are notes in the back of the book which give references to American legal authorities. I have not placed footnotes in the story, in the belief that these would merely be distracting to most readers. Any similarities between the views of Humpty Dumpty, the Lord Chief Justice of Jurisprudencia, and American judges are undoubtedly coincidental, since to Americans Jurisprudencia is a fantasy kingdom, while to Jurisprudencians the United States of America does not exist.

CHAPTER I

The Field Through the Screen

Alice was tired; too tired to read a book; much too tired to study the papers she had brought home with her from the lawyer's office. "After all," she thought, "I have reason to be tired. I haven't done anything all day except go to the lawyer's office, but it is tiring to listen to conversation for an hour and not understand half of it." She remembered from school days how tiring it was to try to talk French—or listen to others talk and try to understand. The lawyer's talk tired her in the same way, even though he tried to make it simple. He even asked her from time to time if she understood, and she always said yes or nodded. One does not like to seem stupid. And much of the time she believed she did understand, until she started to think about it later. Then everything became jumbled, and she realized that she didn't really know the meaning of all the words.

She turned on the television and sank into her comfortable armchair, waiting for the set to warm up and the picture to come on. The sound came to life first. "And so, your honor, I respectfully request a recess until this afternoon, when the defense will produce a new witness who will" At this point the screen lit up and the picture materialized. It was a courtroom scene, and an actor who

looked familiar, although Alice was not sure of his name, was addressing an elderly, bald-headed judge.

"Oh, no," sighed Alice, "just what I don't need tonight." But much as she tried, she could not summon the strength to get up and change the channel.

The courtroom scene faded and a commercial appeared on the screen. A mother and daughter were running through green fields, with music in the background and the voice praising the virtues of some shampoo. Alice was getting drowsier by the second. Her eyes slowly closed and



her head drooped. Exactly what happened next was not clear to her, but she had the illusion that she was passing through the television screen.

Her next clear impression was of standing in the green fields which she had watched from the other side as she

dozed off. The running woman and child with shining blond hair were not in sight. Otherwise, at first glance the scene appeared exactly as she had viewed it from her armchair. As she began to wander around, however, peculiar details of the landscape which were not apparent from the other side of the screen became visible.

The fields were divided by straight lines which looked as if they could have been drawn upon the grass by a giant pen. Along these lines numbers and symbols were written which made no sense at all to Alice. As Alice explored further she discovered that the centers of the fields between the lines had writing all over them too. The writing could have been read easily by a bird flying overhead, but it was difficult to decipher from the ground. Alice had to walk along the rows of words, bending down to make out each word, one at a time. Reading this way was not conducive to understanding the over-all sense of the text, but even allowing for this difficulty, Alice found the language strangely familiar but at the same time largely unintelligible. As she worked her way back and forth across one field, she read this:

".... That said party of the first part, in consideration of the restrictions, covenants, and conditions hereinafter set forth by the said parties of the second part, their successors and assigns, to be observed, kept and performed, and also for the sum of Ten (\$10.00) dollars in lawful money of the United States, to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and subject to said covenants and conditions, does hereby grant, bargain, sell, convey and confirm, unto the said parties of the second part, and to their successors and assigns forever, those certain lots, pieces or parcels of land situate, lying and being in the Town of Habeus,

County of Corpus, Kingdom of Jurisprudencia, and more particularly described as follows, to-wit”

This was by no means the end of the text, but Alice was getting tired from walking back and forth, and her neck was stiff from bending down to read the words on the ground. There was a soft grassy mound at the indentation for the beginning of the next paragraph, so Alice sat down on it to rest and to ponder what she had seen. She had not realized that she was pondering aloud, and certainly she thought she was alone. She must have said something like, “This makes no sense at all.” This was interrupted by a voice behind her replying, “It makes perfectly good sense to the legal mind.”

Alice was on her feet quicker than she would have believed possible and turned to view the source of the voice. A strange figure met her gaze. He was mounted on horseback and held a long lance, which was pointed right at Alice. He wore armor, and immediately Alice was reminded of the television commercial for a household cleanser. This impression was rapidly dispelled on closer scrutiny. The armor was not bright and new but battered and dirty. Furthermore, books and papers were hanging from every part of it, as well as from the saddle and even from the stirrups.

There was still something vaguely familiar about him, however. Alice searched her memory to find what it was. Gradually she recalled—the white knight from the looking glass world of her youth. Certainly the armor and the general battered and slovenly appearance were the same. The face was also familiar, but, seeing it now, Alice was certain that she had seen it more than once before and more recently than in her childhood. When he spoke again, she remembered.

“I see you are a stranger here, my dear, and unfamiliar

with our laws and customs. Perhaps I can help you."

Seeing the face and hearing the voice at the same time helped Alice make the connection. He was the white



knight, to be sure, but he was also the lawyer in the television series she had been watching as she fell asleep. Although he looked very different in his strange costume,

the voice was unmistakable.

Alice was surprised at the way the words tumbled out of her mouth. "Where am I? And what is all this strange writing on the ground? And what does it all mean? It seems to be written in English, but it means nothing to me."

"Well," said the knight, "that is a compound question, but since you are a stranger and probably don't know any better, I will try to answer it or them anyway. You are in the township of Habeus, County of Corpus, Kingdom of Jurisprudencia, as you can plainly see from the title to this land which is written on the ground. We write all our titles on the ground, so it is impossible to get lost here. In some primitive countries, perhaps where you come from, I have heard that titles are filed away in drawers in dusty offices. How one ever finds his way in such places is a mystery to me.

"Let's see, what was the rest of your question. Oh yes; you asked, 'What does it all mean?' It means exactly what it says. It seems to me to be a perfectly straightforward piece of conveyancing. What part of it don't you understand?"

Alice thought, "His explanation is probably going to be no help. I already don't understand him when he uses terms like 'compound question' and 'conveyancing'." But Alice was taught as a girl to be polite to strangers, and she had never outgrown the habit. Therefore, she tried to think of some polite questions to ask.

"Way over there, near that big tree," said Alice, "it says 'said party of the first part'. What does that mean? The whole thing doesn't seem to have anything to do with parties at all, at least not the kind of parties I am familiar with."

The knight smiled and then frowned. "If you had taken the trouble," he said, "to start at the beginning—you can't really make it out from here because it's over the rise—you would know that what was written here was a

deed from the Duke of Corpus to the Baron of Baratry, *et ux*. The beginning of the deed identifies the Duke—the grantor—as the party of the first part and the Baron and his spouse as the parties of the second part, so there can be no mistake regarding the persons to whom these terms refer.”

“That seems clear enough,” Alice replied, without much conviction, “but why ‘*said*’ parties of the first part? What does ‘*said*’ mean?”

This time the knight sighed. “My dear, you really must be a stranger around here. It is lucky for you that I happened along, as I do explain these things very well in terms even a small child can understand. I doubt most people would be so patient. ‘*Said*’, of course, is a short form of expression which properly should be written ‘*aforesaid*’. However, we tend to use very simple language here. ‘*Said*’, or ‘*aforesaid*’, means the person or thing previously mentioned, in this case the ‘party of the first part’ previously mentioned, which is, of course, the Duke of Corpus.”

“Oh,” said Alice, “I see,” this time with even less conviction. She thought for a moment. “Is there some other party of the first part with whom I might get this party of the first part confused if they didn’t say ‘*said*’?”

“Certainly,” replied the knight, assuming an even greater air of infinite patience, “every deed has a different party of the first part.” He paused. “Well, actually, all the land around here was originally owned by the Duke, so you would find that all the parties of the first part are the same in this valley, although the parties of the second part would all be different. In any event, the use of the word ‘*said*’—or ‘*aforesaid*’—makes the identification of the parties much more precise, and precision is the main objective of all writing. Furthermore, when we say ‘*said* party of the first part’ we avoid having to repeat the name of the party grantor—in this case the Duke of Corpus—each time we refer to him, and this makes things a lot easier.”

Alice thought, "Actually, the words 'Duke of Corpus' are easier to say than 'said party of the first part' and it seems even more precise to me to say exactly what you mean." She was going to make this remark out loud, but the expression on the knight's face reminded her of part of a poem she learned in her youth, and she thought better of it.

There was a pause in the conversation, as Alice tried to think what to say next. The knight interrupted it by asking, "What else don't you understand, my dear?"

"I sort of understand 'restrictions, covenants and conditions'," said Alice, "except that I don't really know what the difference is."

"Well," replied the knight, "that can get rather technical. There are definite historical differences between 'covenants' and 'conditions'. 'Restrictions' is a broader term which could apply to either a covenant or a condition, and possibly to some things which are neither covenants nor conditions, although not all covenants or conditions are necessarily restrictive, certainly. However, I am sure it would bore you to go into all the fine distinctions. For our purposes, it is enough to know that there are some restrictions in the grant, which may be either covenants or conditions, or possibly neither. You will find them written out on the other side of that stream."

"If that is so," said Alice, forgetting her reserve of a few moments before, "why was it necessary to mention all three?"

"A fair question," replied the knight. "Again, as I stated, precision is the goal of all writing. It would be imprecise to refer, for example, only to 'covenants' if one of the restrictions was in fact a condition. By including all three terms, one is sure to cover all the possibilities, or at least all the reasonable probabilities."

Alice restrained herself once more from asking why it was necessary to cover all the possibilities or from trying to

find out, for that matter, what the distinction was between possibilities and reasonable probabilities. Instead, she plunged on, asking, "Would you be so kind as to explain 'by the said parties of the second part, their successors and assigns, to be observed, kept and performed'? This seems to me to be another example of the author of this whatever-it-is using two or three words where one would do."

The knight did not seem to be offended by this comment, which Alice thought was rather bold, almost instantly after having uttered it. "Successors and assigns are two different things," he responded. "A 'successor' is an heir or a devisee—which of course means a person who acquires title to real estate by will—even you must know that. 'Assigns' are those who take title by assignment, purchase, grant, etc. The use of the term 'successors and assigns' is a way of indicating that the covenants or conditions 'run with the land', which is to say that they are binding on future owners, not just on the immediate parties to the deed. As for 'observed, kept and performed', they are perfectly simple words which obviously do not mean the same thing at all. 'Observed' and 'kept' are passive, while 'performed' is active. One would perform a covenant which required one to do something affirmative. Of course, not all covenants require some affirmative action. Some may be like most conditions or restrictions, which might merely require one to refrain from doing something. One could hardly speak of performing a condition which required one to refrain from some action. So you see that all those words really do add precision."

Alice noticed, but thought it too impolite to comment on the knight's failure to explain the difference between the meanings of 'kept' and 'observed' or why it was necessary to use both words. Besides, the conversation was beginning to tire her, and there was still a great deal more she did not understand.

"I suppose," the knight continued, appearing to warm to the task of explaining things to Alice, the wearier she became, "you also want to know the difference between 'grant, bargain, sell, convey, and confirm'."

"Yes, please," Alice replied. "And what interests me even more is why it says 'has granted, bargained, sold, conveyed and confirmed', and then repeats it all again in the present tense by saying 'does hereby grant, bargain, sell convey and confirm'. Did the 'party of the first part' or whoever it is really do all those things twice over?"

"You have a bad habit," said the knight, "of asking more than one question at a time. However, I will overlook that."

"Actually, the grant of title to the realty is supposed to be simultaneous with the covenants and with the payment of the consideration. Of course, in a literal sense, it is difficult to do several different things simultaneously. The draftsman of this deed has handled the problem very nicely, I think, by expressing the grant in both the present tense and with past participles, thus very neatly surrounding the consideration with it, so to speak."

The tone of the knight's voice and the way he smiled made Alice think that he had said something witty, although she did not really understand it. However, she wanted to appear to be an intelligent listener, so she thought she should make some comment.

"I understand about the 'consideration'," said Alice. "Consideration means something of value and is necessary to have a binding contract. My lawyer just explained that to me. But isn't ten dollars rather a small amount for all this land? And why 'lawful money of the United States'? Don't tell me that this is part of the United States!"

"I would not tell you such an untruth," replied the knight. "There is no such place as the 'United States'. It is a fictitious country that we refer to in deeds. You are

almost right about the consideration, but of course the real consideration wouldn't be stated in the deed. That is too private a matter to be written out for all to see. Therefore, we state some fictitious consideration, such as 'Ten (\$10) dollars in lawful money of the United States'. Since the law only requires some consideration, it doesn't really matter how much or what kind of money we use, real or imaginary."

Now it was Alice's turn to smile. She started to say, "But there is such a place as the United States. . . ." She hesitated, however. She was sure the knight would not believe her and realized that it is rude to contradict or criticize the customs and beliefs of foreigners. Instead, she decided to try to change the subject slightly.

"I suppose," said Alice, "judging from what you have told me, that every word in this deed, if that is what you call it, is really necessary."

"That," replied the knight, "depends upon what you mean by necessary. There is not a word which does not have its purpose. Obviously, this deed was written by a very careful and thorough draftsman. However, our law, being very progressive, recognizes that not every draftsman is that thorough. Therefore, even if some of the words had been left out, the law would nevertheless imply the same meaning, although leaving things to be implied is certainly not the craftsmanlike way of doing it."

"Suppose," said Alice, "one did not have all of this space to write such a lengthy deed. Suppose it was only a tiny plot of land with room only for a few short lines. How might you have written it if you were really cramped for space?"

The knight was silent for a long time, as he sat in the saddle in deep thought. Slowly, he got down from his horse. This was a difficult operation because of all the books and papers hanging from his armor and from the saddle, and

Alice was afraid that he would lose his footing and fall in a heap under the horse. He managed to dismount and stay on his feet, however. He picked up a stick that was lying on the ground and began to scratch out some words in the dirt.

"I think I have it," he finally said. "The shortest possible way of writing this, up to the description of the land and the covenants, conditions and restrictions that follow it across the stream, which I doubt could be condensed without losing something of the meaning, would be: 'For value, the Duke of Habeus grants to the Baron of Baratry, *et ux*, subject to the following restrictions, the property in Habeus, Corpus County, Jurisprudencia, described as. . . .'"

"Does that really mean exactly the same thing as all those words covering this whole field?" asked Alice.

"It means the same thing, if you choose it to," said the knight. "At least it does the job, although not with any style."

"Someone once told me, a long time ago," said Alice, "that a word meant just what he chose it to mean. Do you believe that?"

"There are many people who believe that," said the knight. "But if that sort of thing interests you, you should meet our Chief Justice. He can almost persuade one that words don't mean anything at all."

"I should very much like to meet him," said Alice, "but I am not sure I have time."

"The Supreme Court is just over the hill," said the knight, "and I believe it is in session right now. It shouldn't take long, and you can ride over with me if you like."

Alice helped the knight to remount his horse—no mean task since the books and papers dangling from his armor kept getting in the way. This accomplished, he cleared the space behind his saddle and gestured for her to get up there. This proved to be even more difficult than the knight's

ascent, as the books and papers were now hanging down alongside him. However, after several attempts, Alice managed to seat herself behind the knight and to get a grip of sorts on the back of the saddle.

They started off along the last row of writing which Alice had read. As they reached the end of the row, the horse stopped and refused to start again. The reason soon became apparent as the horse lifted its tail and relieved itself. Alice looked back to see if the horse's droppings had obliterated any of the writing. Sure enough, they fell right upon the final words of the line—"to wit"completely covering them. This accomplished, the horse resumed its slow pace.

Alice could not contain her curiosity concerning the effective elimination of these words from the text. "Would you mind terribly if I asked just one more question," she said.

"Please feel free to do so, my dear," replied the knight. "It will help to pass the time on our journey."

"What does 'to-wit' mean, and is it terribly important in that deed? I mean, if it should be left out, would it matter?"

" 'To-wit' means 'namely', or 'that is to say'," replied the knight. "It is an expression which has its uses, although often the use of a colon or some other sign of punctuation would do just as well."

Alice persisted. "If it were just eliminated, without replacing it with a colon or some other punctuation, could that alter the meaning?"

The knight took some time to think this over. "Punctuation," he finally replied, "is sometimes purely ornamental. On the other hand, sometimes it is essential to clarify the meaning. In the case of the deed over there," he continued, pointing back over his shoulder and almost knocking Alice off the horse—"I am sorry my dear. In the

case of the deed over there, 'to-wit', which could just as easily have been a colon, appears between the phrase, 'more particularly described as follows' and the legal description of the property. I suppose the draftsman might have said 'more particularly described as a lot 250 yards long by fifty yards wide, the boundaries of which are thus and so' and left out the 'to-wit' and the 'follows'."

"Why then," asked Alice, "do people use all those words that aren't necessary?"

"A very good question, my dear," replied the knight. "However, we are coming in sight of the Courthouse. Perhaps what you see and hear in there may help you to find the answer."

CHAPTER II

Intent, Intention, and the King's Drawbridge

The rest of the journey was never clear in Alice's mind. The next thing she remembered was entering a courtroom. In some respects it was like the television courtroom, but there was a strange and varied assortment of creatures in attendance, and the crowd seemed noisy and boisterous. However, Alice did not notice any of the individual members of the audience until later, for her attention was focused at once to the front of the room. There was an elevated platform with a partition around it, exactly like the judge's bench on television. The judge behind the bench was one of the strangest figures Alice had ever seen. All that was visible to her from the back of the room was a huge head. It was round—no, not really round but ovoid—and completely hairless. A large mouth was evident in the center, but other features were not prominent. The rest of the body, if indeed there was one, was invisible behind the bench. Alice could not tell for sure whether the figure was sitting or standing. Unearthly as the figure appeared to Alice, she had a strong sense that she had seen it someplace before. It was speaking as she

entered, apparently reading from some document. Alice tried to concentrate on the speech, but at the same time she kept searching her memory, trying to discover what was so familiar about the speaker. What she did manage to hear sounded something like this:

“... Having determined that the contract had a plain meaning, the trial court refused to admit any extrinsic evidence that would contradict its interpretation.

“When a Court interprets a contract on this basis, it determines the meaning of the instrument in accordance with the extrinsic evidence of the judge's own linguistic education and experience... The exclusion of testimony that might contradict the linguistic background of the judge reflects a judicial belief in the possibility of perfect verbal expression... This belief is a remnant of a primitive faith in the inherent potency and inherent meaning of words...”

“This makes no sense to me at all,” Alice thought, and while she was thinking this she missed some of the discourse. The next part she heard was:

“Some courts have expressed the opinion that contractual obligations are created by the mere use of certain words, whether or not there was any intention to incur such obligations. Under this view, contractual obligations flow, not from the intention of the parties but from the fact that they used certain magic words. Evidence of the parties' intention therefore becomes irrelevant.

“If words had absolute and constant referents, it might be possible to discover contractual intention in the words themselves and in the manner in which they were arranged. Words, however, do not have absolute and constant referents. A word is a symbol of thought but has no arbitrary and fixed meaning like a symbol of algebra or chemistry... The meaning of particular words or groups of words varies with the verbal context and surrounding

circumstances and purposes in view of the linguistic education and experience of their users and their hearers or readers (not excluding judges). A word has no meaning apart from these factors; much less does it have an objective meaning, one true meaning. . . . Accordingly, the meaning of a writing can only be found by interpretation in the light of all the circumstances that reveal the sense in which the writer used the words. . . ."

Alice found that the harder she concentrated on trying to comprehend the last sentence spoken, the more she was inclined to miss the next. "Some of this sounds familiar," she thought. "Where have I heard it before?"

It went on: "The fact that the terms of an instrument appear clear to a judge does not preclude the possibility that the parties chose the language of the instrument to express different terms. . . . Accordingly, rational interpretation requires at least a preliminary consideration of all reliable evidence offered to prove the intention of the parties. . . ."

At this, the strange looking judge ended his address, and the crowd jumped to its feet, everyone conversing loudly and with great animation. Alice could no longer see the bench through the jumble of creatures, and she missed the judge's exit from the room. She was still trying to recall who it was that he reminded her of when the noise began to subside, and she could hear the knight, who was seated to her right, say, "Some people believe that words mean anything one chooses them to mean."

At that moment, Alice recalled where she had seen the judge before. "Why, it's Humpty Dumpty," she exclaimed.

"Of course, my dear," the knight replied. "That is our Chief Justice's name. Do you know him?"

Alice smiled. "We have met before, a long, long time ago." She stopped, realizing that the statement could either be an answer to the knight's question or refer to the knight himself, but then went on anyway without explaining.

"Tell me, what was that all about? I didn't understand half of it, although it did seem very poetic."

"I could explain it to you," the knight replied, "but perhaps we should talk to the counsel for the parties to the case, since they are still here."

Alice looked to the front and discovered that all the crowd had left and that she and the knight were alone, except for two short, fat little men, who were engaged in heated conversation in front of the bench. From the back, they appeared to be identical—small round heads and large round bodies, both stuffed into black suits of the same material and cut.

The knight took her by the arm and led her toward the front of the room. As they approached, the knight greeted the pair, and Alice had her first view of the two faces which went with the figures. The faces were also round, fat and



identical. Alice had a further feeling of recall from the distant past. "Why it's Tweedledee and Tweedledum!" she exclaimed.

The two men simultaneously reached into vest pockets and produced cards, which they placed in her hand, extended in expectation of shaking hands with them. One card said "Tweedledum, Q.C.", and the other said "Tweedledee, J.D.". Both then began to talk at once, apparently about the decision of the Court which they had just heard, but Alice could not make out what either was saying.

The knight interrupted the din by saying, "This lady is a stranger here and quite ignorant of our laws. She wants someone to explain this case to her."

Tweedledum (or was it Tweedledee) commenced an explanation. "The king had his drawbridge repaired, you know. He hired Jabberwock and Bandersnatch to do the job. While the new drawbridge was being raised for the first time, some stones fell out of the castle wall and opened up a big hole, right next to the queen's bedchamber. The contract for the work. . ."

"A drawbridge," Alice remarked, interrupting. "How very quaint! Do you really still have drawbridges here?"

"We do," Tweedledee replied (or was it Tweedledum). "Of course, we don't use them any more."

"However," said Tweedledum (or perhaps *vice versa*), "when this happened, in the reign of the present king's grandfather, drawbridges were still used as a means of defense."

"In the reign of the present king's grandfather," Alice exclaimed, repeating what she had just heard. "How could that be, if the case is just in court now?"

"Well, it has gone forward quicker than most," said Tweedledum, "but then there were no extraordinary complications. Of course, if it were a complicated case, it might have taken much longer."

"Much longer," echoed Tweedledee.

Alice discovered just then how to tell them apart. While she could discern no distinguishing features about their faces or figures, and their clothes were the same, one small detail caught her eye. Each was wearing a tie clip with gold initials, both of the same design. However, the initials on one were "DUM" and on the other "DEE". From this she inferred that the last one to speak was Tweedledee.

"I would think," said Alice, "that everybody involved in the case must have died years ago. How can you have a trial when nobody is left who remembers what happened?"

"No problem at all," said Tweedledum.

"Contrariwise," added Tweedledee. "It's when you have live witnesses still around that there's trouble. They're likely to surprise you by remembering something at the last minute they hadn't thought of before. When they're all dead, there's no chance of any surprises, which makes things much neater and fairer."

"If I had my way," Tweedledum remarked, "I would make it against the law to have a trial while anyone was still alive who might remember something about the case."

"What can make it take so long?" asked Alice.

"It doesn't take long," Tweedledum answered. "Some cases take only ten or fifteen years."

"Why can't you just go to court and have a trial and get it all over within a few days?" Alice inquired.

"That would never do," remarked Tweedledee.

"No how," Tweedledum added. "The case starts with the initial pleadings, of course. Then the opposing parties must file other pleadings to bring in additional parties by counterclaim, cross claim, third party claim, interpleader and the like, in order to enforce all the rights to contribution and indemnity, allocate comparative fault, and what-not. Then each of the parties has to challenge all the other

parties' pleadings by demurrers, motions to strike, demands for bills of particulars, motions for a more definite statement, etc., etc., etc. And then," he continued, pausing for a moment to catch his breath, "you have appeals from the rulings on all these proceedings. After the appeals are decided, the pretrial phase of the case can begin in earnest."

"All that makes about as much sense to me as the Jabberwocky," said Alice. "How long do all those demurrers and what's its and appeals take?"

"Sometimes five years; sometimes a bit longer," Tweedledee responded.

"What happened to the queen's bedroom while all this was going on?" Alice asked.

"That's no concern of ours," said Tweedledum. "We are not here for the convenience of the litigants but to see that justice is done and that no right is overlooked. We leave problems of masonry to the masons."

"And carpentry to the carpenters," Tweedledee interjected.

"Do you know the mouse's tail?" Alice inquired, although she was not sure why she suddenly thought of it.

"Mouse's tail? Mouse's tail?" Tweedledum repeated several times. "The name of that case has a familiar ring, but I can't quite place it."

"Hasn't it been overruled?" asked Tweedledee.

"I don't think so," said Alice. "It's a sort of a poem that I heard long ago, which goes on and on and on. Something about this case reminded me of it."

"Oh, we love poetry," Tweedledum remarked. "Recite it for us."

"I'm not sure I remember it," Alice responded, "but I'll try. I think it's something like this:—

"Fury said to
 a mouse, That
 he met in the
 house, 'Let
 us both go
 to law: *I*
 will prose-
 cute *you*.—
 Come, I'll
 take no de-
 nial; We
 must have
 the trial;
 For really
 this morn-
 ing I've
 nothing
 to do.'
 Said the
 mouse to
 the cat,
 'I will
 have
 none
 of that.
 Before it
 is over
 I won't
 be a-
 live!'
 "You'll
 be out
 of the
 run-
 ning,'
 said
 old
 Fury
 with
 cun-
 ning;
 My
 nine
 lives
 as-
 sure
 I'm
 the
 one
 to
 sur-
 vive."

"Somehow, that doesn't seem quite right," Alice remarked, "but that's how I remember it."

The knight coughed softly and said, "We seem to have digressed rather far from the account of the case of Rex versus Jabberwock and Bandersnatch."

"Quite, quite," Tweedledum exclaimed. "As I was saying, there was a contract for the repair of the king's drawbridge."

Tweedledee interrupted. "Twenty six pages in 4 point type! It was a very thorough contract; we provided for every contingency."

Tweedledum continued: "Naturally, one of the possibilities that we prudently anticipated was an accident during the course of construction which would cause injury to persons or property."

Tweedledee was quickly leafing through some papers on the table behind him and, seeming to find what he was looking for, he interrupted again. "To protect my client, the king, against any such contingency the contract contains the following clause: 'Contractor'—that's Jabberwock and Bandersnatch—'undertakes and agrees to indemnify Owner'—that's the king—'against all loss, damage, expense and liability resulting from injury to persons or property, arising out of or in any way connected with the performance of this contract.'"

The first twin interrupted again, saying, "We discussed that clause of the contract before we signed and agreed that it applied only to damage to the property of third parties. We never understood that we were required to pay for damage to your client's property, unless it was my client's fault. You know perfectly well that the mortar around those stones was old and rotten, and it was nobody's fault that they came out."

"True," replied the second twin, "but the contract is plain and unambiguous on its face. It doesn't say anything

about third parties or restrict the property which is covered by it. The intention of the contract is clear, and under the law—or at least the law as I always thought it was until today—what the parties may have meant to say has nothing to do with the case.”

Alice took advantage of the first break in the conversation to ask a question. “How can ‘intention’ have nothing to do with what the parties meant to say? Isn’t that what intention means?”

“Exactly,” said Tweedledee, rather excitedly. “You seem to be a very intelligent young lady. You have grasped exactly what the Chief Justice was saying. There is no such thing as ‘intention’ in the words themselves. Since words mean only what people choose them to mean, ‘intention’ can only be ascertained by finding what the parties meant to say.”

The knight sighed audibly but said nothing. Tweedledum was not silent for long, however. He picked a book off the table and began reading from it. “‘The question in expounding a will is not what the testator meant, but what is the meaning of his words.’

“That case,” continued Tweedledum, “was decided less than twenty years ago. I argued it myself and remember it well. True, it concerned the interpretation of a will, but the principle is the same and is what the law has always been. The decision today will lead to chaos, mark my words.”

“Pay no mind to him,” said Tweedledee, turning to Alice and smiling. “He is inclined to exaggerate. The Chief Justice is merely injecting a little common sense into our law, and some old traditionalists are offended by it.”

Tweedledum responded sharply, “If you think it’s common sense, tell me how we are going to ascertain the intention of the parties in this case.”

“That’s easy,” replied Tweedledee. “You know we

never intended that clause of the contract to apply to damage to the king's property; I think the intention was clear, even if the words, taken out of context, do have an unfortunate connotation."

Tweedledum smiled and spoke more calmly this time. "Assuming that's true—and mind you, I don't concede that was our intention—we are not the parties. What did Jabberwock and Bandersnatch mean the contract to say? They are your clients; you should know."

"Well," replied Tweedledee, thoughtfully, "Jabberwock read the contract. I don't recall our discussing that point. I'm not sure, but no doubt his intention was the same as mine. As for Bandersnatch, you know he isn't one for paperwork. I doubt he read the thing at all."

"As for my client," said Tweedledum, "of course the present king's grandfather was reigning when the contract was entered into, and he is no longer alive to say what he intended, may his soul rest in peace. Meaning no disrespect for his late majesty, obviously he didn't even read the contract. He had the knave review it for him, and the knave, being such a lazy featherbrain, probably didn't take the trouble to read through the whole 26 pages. However, I have no doubt he will say, if pressed, that he understood the contract to mean exactly what it says. He wouldn't be clever enough to think of anything else."

"I am beginning to see," said Alice, thinking out loud, "that finding the 'intention' of the parties isn't as easy as it sounds."

"Nobody ever said it would be easy," responded Tweedledee, "but at least the law should give effect to what the people involved really intended, rather than what some judge thinks they ought to have meant."

"Assuming that anyone can figure out what they really intended, and assuming that they all intended the same thing," said Tweedledum, interrupting again. "If the judge

can't figure that puzzle out, and in 99 cases out of 100 I daresay he can't, he will have to decide for himself anyway. And think of how much more time it is going to take having to ask everyone in sight who may have looked at the document what he thought it meant. Trials in these cases may go on for months. Who is going to pay for that sort of thing?"

At this point they both began talking at once, and Alice could not make out the conversation. The knight tugged at her sleeve and whispered to her, "I think we had best leave, my dear. This debate is likely to go on forever."

Alice and the knight walked up the aisle of the courtroom, and as they left Alice turned to see the two round little figures still engaged in argument, though which was which she could no longer remember.

Alice was glad to get outside and take some deep breaths of fresh air, hoping it would clear her head of all the confusion engendered by the discussion she had just heard. The knight was silent and seemed thoughtful, which gave her a chance to gather her thoughts. Finally, Alice felt that she should break the silence, which she did by asking, "Which of them do you think is right?"

"It's an interesting question," he replied slowly. "What the Chief Justice is saying, of course, is that words can mean whatever people choose them to mean. I suppose that's true enough, but I'm not sure it's helpful in deciding real cases, where the meaning of words is an issue. What a person really meant to say is so dreadfully hard to discover. Sometimes I wonder if people know themselves. I am afraid that the search may make us all into psychoanalysts trying to find the hidden meaning in every word."

"Isn't that the purpose of the law—to arrive at the truth?" Alice asked.

"Exactly so, my dear," the knight replied. "And that is the virtue of ascertaining intention according to the 'plain

meaning' of the words used, rather than some other meaning which someone may have intended—you are always sure of arriving at the truth."

Alice was very puzzled by this answer and thought about it for at least a full minute. Finally, she asked, "How can you find the intention of what people say if you don't consider what they intended?"

"The old way," said the knight, "one was always sure of arriving at an answer, which was the correct answer because the law said it was. If the only way of arriving at the correct answer is to determine what the parties intended, in many cases we may never arrive any place at all. If I am to arrive somewhere, I prefer to be sure of the destination beforehand. When we define 'intention' to be the plain meaning of the words, we have charted a destination that is attainable in most cases."

"But that isn't what 'intention' means at all," Alice said rather heatedly. "You're just using the word 'intention' to mean what you choose it to mean."

"To that extent," the knight replied, smiling, "I'm just like your friend the Chief Justice."

They had been standing on the steps of the courthouse, with the sun shining directly on the knight's back. As he moved aside slightly to let someone pass, the sun went directly into Alice's face, almost blinding her. She closed her eyes to shut out the glaring light, while she said, "I suppose that's right, but it all seems to be some sort of paradox. Is all of your law like this?"

The knight evaded her question, saying, "All this talking has made me very hungry and thirsty. I suggest that we take some refreshment at that inn across the way."

Alice realized she had been so intent upon the discussion that she had not taken notice of her surroundings. They were standing on the front steps of the courthouse building, which faced a large square. The knight pointed to

the other side of the square, on which there stood a half-timbered building with a steep-pitched slate roof, looking just like a travel poster of some ancient British country inn. A large wooden sign on the front proclaimed the name of the establishment—"THE UNICORN"—together with a picture of that fabulous monster.

CHAPTER III

A Visit to the Unicorn

As they entered The Unicorn, Alice was confronted with a bewildering scene. The inn was crowded with people, many of them unlike any people Alice had seen before, some strangely familiar, and some not like any "people" at all. Alice recognized some of them from the throng that had been in court. Almost immediately, Alice's attention was diverted from the crowd, as she noticed the Chief Justice seated immediately inside the door at a table by the front window. A large napkin was tucked or tied below his huge rounded face, extending down onto the table, so that, once again, none of the body was visible. Alice pointed him out to the knight, who thereupon took her by the arm and led her up to the Chief Justice's table.

The knight made introductions, stating, "Your Honor, this young lady is a stranger here and is very curious about our laws and customs. I am sure you would be amused by some of her questions."

"Sit down, sit down," said the Chief Justice. "I enjoy a few good questions with lunch—aids the digestion you know."

They sat, and a long silence ensued. Alice, being uncertain how to address a Chief Justice, was loath to begin



the conversation. Finally, the knight said to her in a loud voice, which was fully audible to their august companion, "Ask him what you asked me out there on the courthouse steps."

Alice blushed and stammered, but was unable to get out any coherent words, having forgotten the question she had asked the knight. The Chief Justice stared at her and said nothing.

The knight finally came to her rescue, reminding her, "You know, you asked me if all our law was like the case we heard this morning."

Alice had not remembered asking that question, but she was relieved that someone had given the conversation a

push forward. The Chief Justice seemed lost in thought, but then responded in exactly the tone he had used in delivering his oration from the bench in the courtroom.

"There are some laws that I like to think of as open ended: statutes or rules that merely say: 'Do what you think is right.' We cover this up decently by saying that one should be 'reasonable', which really does not mean anything, except that you should take the conflicting values and the probabilities, and make the best guess you can.

"But there is the other kind of law: Far the greatest part. This consists of the interpretation of words. This morning's case, of course, was of the latter type."

Alice felt that the Chief Justice was talking down to her, as one might to a child. She momentarily forgot her awe of him and said, "Certainly, there must be a great deal more that you do besides guess as to what is right and interpret the meaning of words."

"It all really comes down to just those two things. Of course, we dress up the process in a lot of fancy language at times—envelop it in the mists of metaphor, you might say."

"The mists of metaphor," said Alice, unconsciously imitating the way Humpty Dumpty spoke. "That sounds almost poetic. What does it mean?"

The Chief Justice smiled, and with his huge face it turned into the broadest smile Alice had ever seen. "Actually," he continued, "I was quoting from myself—a rather bad habit I have. I used that phrase in one of my most famous opinions some years ago—'the problem is one that is still enveloped in the mists of metaphor. Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.' I was talking about unicorns, of course."

"Unicorns," said Alice. "What have unicorns got to do with the law?"

The Chief Justice responded, again in tones he might

use in delivering an oration to the courtroom: " 'A unicorn is a juristic person organized by government to accomplish certain ends.' I am quoting myself again, I fear. I really can't help it."

"It's a very impressive phrase," Alice commented. I am afraid I don't know what 'juristic' means, however. Everyone here does seem to use such awfully complicated words."

" 'Juristic'," the Chief Justice replied, "means created by law. I used that word to make it clear that sex has nothing to do with it."

As he said this, the Chief Justice appeared to wink. The gesture was so strange on his huge face that Alice could hardly keep from laughing, but Humpty Dumpty seemed to interpret her smile as a sign of appreciation of what she assumed was an attempted witticism, so nobody was offended.

Alice asked, "Do you mean to say that a unicorn is created by the law? I don't understand how that can be. I always thought that a unicorn was a fabulous monster."

The Chief Justice chuckled. " 'Fabulous monster'," he said. "I must remember that. I've got to use that phrase some time. You are very clever, young lady."

Alice frowned and said, "I had not really intended to say anything clever. I really am confused by all this. Please explain to me how the law goes about creating a unicorn."

Humpty Dumpty did not seem inclined to enlighten her, but the knight joined in. "This inn is a good example," he explained. "You see the unicorn standing over there behind the bar."

Alice looked, and much to her surprise, there was a unicorn standing behind the bar, horn and all. From the distance, and due to the constantly moving crowd of people in the way, she could not really tell whether the unicorn was alive or stuffed, but he looked real enough. The knight continued, "He's the legal owner of this inn. The equitable

owners, Hatta and Haigha—that's Haigha also behind the bar—started the business with very limited capital. They did not want to be personally responsible for the debts if the business failed, so they created a unicorn to be the legal owner, for limited liability."

"That doesn't seem quite fair to me," Alice interrupted. "If they are the real owners of the business, why shouldn't they pay the debts? It seems to me they are trying to have their cake and eat it too."

The Chief Justice, who had been silent for some time, spoke at this point. "'Many a man incorporates his business or his property and is the dominant and controlling feature of the corporation. He may do so for the very purpose of escaping personal liability.' One of my distinguished predecessors said that. Of course, he used the archaic word 'corporation', meaning unicorn. But the rule still holds; with exceptions, of course."

"Oh," said Alice, "you call a corporation a unicorn. How strange! Although, come to think of it, corporations have always seemed like fabulous monsters to me too. But I still don't understand how the law creates a corporation, or a unicorn, or whatever you want to call it."

"If you wouldn't keep interrupting," said the knight, "I would explain. Taking Haigha and Hatta as our example, the two of them drew up some papers called 'Articles of Incorporation' or 'Articles of the Unicorn' and filed them in the courthouse. They issued five shares in the Unicorn to each of them, at \$10 a share. They then had a charter from the king and \$100, which is enough for a bona fide unicorn."

Alice could not help interrupting again. "Don't tell me," she said, "they built this whole inn and stocked it with furniture and dishes and glasses and all that, not to mention food and drink, for only \$100."

"Of course not," the knight said. "The unicorn

borrowed the money for all that—or got credit from the suppliers, which amounts to the same thing. I told you they started the business with very little capital.”

“That seems like a great deal to borrow,” said Alice thoughtfully. “Suppose they couldn’t pay it off. What would happen to them?”

The knight laughed and said, “That is the reason that the unicorn is behind the bar. Any creditors can present their bills to him.”

“How very strange,” said Alice. “But what about Haigha and Hatta. Don’t they have to pay the bills, if the unicorn can’t pay?”

Alice tried to imagine how a unicorn would pay a bill, but she couldn’t seem to form a mental picture of it. Before she could ask about that, however, the knight responded to her first question.

“The unicorn, you see,” he said, “is a separate person. The lender and the suppliers extended credit to him—not to Haigha and Hatta. If they wanted, of course, they could have insisted that Haigha and Hatta guarantee payment, and if they didn’t they should have no reason to complain if the unicorn can’t pay. Of course, if they can pierce the corporate veil, that could be another matter.”

“Pierce the corporate veil,” Alice exclaimed. “What a quaint expression! Is the corporate veil some article of unicorn apparel? Or is it a part of his anatomy? I assume that unicorns are he’s. They seem so very masculine. Is it painful? I find everything here so very confusing.”

“Things would be less confusing,” the knight said, “if you wouldn’t persist in asking so many questions at once.”

Humpty Dumpty came to Alice’s defense. “That’s just one of those metaphors I was talking about. You are quite right, young lady; it is confusing. All it really means is that the law will disregard the unicorn as a person separate and apart from his owners.”

"I would think," said Alice, "that would be very easy to do. The unicorn doesn't seem to me to be a *person* at all. I have been watching him behind the bar while we were talking, and he hasn't moved once. I believe he is stuffed. However, if you have the quaint idea that he is a person, I don't see how you can then turn around and disregard him. Why would you want to do that anyway?"

The Chief Justice smiled and replied, "The conditions under which the separate personality of a unicorn may be disregarded vary according to the circumstances of each case. It has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the unicorn and the individuals no longer exist, and (2) that, if the acts are treated as those of the unicorn alone, an inequitable result will follow."

"Oh, I see," Alice said. There was a long pause, and then Alice continued. "Well, actually, I don't see. Take that unicorn over there behind the bar. From what you told me, Haigha and Hatta own and control him completely. And he doesn't seem to have much personality at all, at least to me. I mean, all he does is stand there like a stuffed animal. Would you say he had a separate personality?"

The knight replied, "I know of no case which has gone so far as to say that the mere fact that a unicorn has only two—or for that matter even one—owner was enough to disregard his separate personality. Actually, we call the owners 'stockholders' here, since a unicorn is a form of livestock, you know. No, it would take more than that to pierce the corporate veil."

"I see," said Alice, without conviction. "If it doesn't mean that, what does 'unity of interest and ownership' mean?"

The knight coughed and then cleared his throat. "There is no simple test," he said. "There are quite a

number of facts to be considered."

"Oh," Alice said, feeling very bright this time. "You draw up a sort of list, like a true and false quiz. If the unicorn scores over 50% it's a real person. Is that how it works?"

"It's not that simple," the knight replied. "It's really a matter of judgment, I suppose."

"I can understand that, I guess," said Alice. "What we're talking about is the unicorn's personality. When it comes to personalities, opinions can differ. Why I know some people who are said to have terrific personalities, and I certainly don't understand what everybody sees in them. But what about the other part of the requirements for piercing the corporate veil, something about an 'inequitable result'? I suppose that part is more precise."

"Actually," said the knight, looking rather gloomy, "that part is more what the Chief Justice calls a 'do what you think is right' problem."

Humpty Dumpty broke into the conversation at this point, saying, "Don't let him fool you, young lady. Both parts really boil down to a question of 'do what you think is right'. You can take all your corporate veils, unity of interest and ownership, and all the rest, mix them together, analyze them, define them, do whatever you like to them. In the end, you just have to 'do what you think is right'."

Alice was puzzled. "I haven't had much experience with unicorns," she said. "Now, take our friend behind the bar. He's really only the second unicorn I've ever seen. Does he have a real personality or not?"

"You must realize, young lady," the Chief Justice responded, "that in my position I can't be giving opinions on matters of this sort, outside the courtroom that is. And in any event, the answer may depend upon who is raising the question and for what reason."

"I never heard of a question which had a different

answer, depending upon who was asking it," said Alice. "I realize that, as a judge, you can't go around expressing yourself on matters that might later come up in court, but can't you just give me some idea how you would go about deciding the answer to such a question, assuming that I were asking it in court, rather than here?"

"That question," replied Humpty Dumpty, "usually gets asked by one of two types of people. For one, you might be an unpaid creditor of the unicorn who is trying to get around him to collect from his stockholders. Since this unicorn is obviously very prosperous, in his case it would hardly arise from that source. The other source of the question might be the king's tax collector. He might ask if such a prosperous unicorn has a real personality, because it might be worth some taxes to prove that he does not. You don't look much like a tax collector. Are you?"

"Goodness, what a thought!" Alice exclaimed. "Of course I am not. But if this has anything at all to do with taxes, I'm sure I won't understand it. I never do."

The conversation was interrupted by a commotion behind the bar. Alice turned to see what was happening and was surprised to find that the unicorn was moving about with considerable animation. Not only that, he was shouting.

"I have been robbed," the unicorn cried. "Last night the cash drawer was full. Now it's almost empty. Where's Haigha?"

Alice also noticed that, while she had been talking with the knight and the Chief Justice, the room had emptied out. The three of them were the only customers left. The unicorn leaped over the bar and approached their table. He was sobbing, and tears were running down his face and falling in drops from the beard at his chin.

Between sobs, he poured out this story: "I've known for some time that something was amiss. Business is always



very good, but the money just seems to disappear. I knew it had to be Haigha taking it, but a unicorn can't go about accusing his own stockholder of embezzlement. Hatta should have paid more attention to the business, but of course he's only interested in making hats. And Haigha is his brother-in-law. I suppose Hatta would never suspect him."

Alice, who always was fond of animals, felt terribly sorry for the unfortunate beast. "Oh you poor creature," she said. "And to think that I suspected you of having no personality."

This remark seemed to have an immediate effect on the unicorn. The sobs stopped, and he responded with anger instead. "What's that?" he shouted. "No personality! I don't know who you are, but even if you are a stranger, you should know better than to go around accusing unicorns of having no personality. Why, that's the worst thing anyone

can say about a unicorn."

The knight took Alice by the arm and began to guide her toward the door. He whispered in her ear, "I am afraid you have made a *faux pas*, my dear. We had best leave at once." They were out of the door before Alice realized with chagrin that she had neglected to say goodbye to the Chief Justice. She protested to the knight about their too-hasty departure, but he reassured her, saying, "Don't worry, my dear. I am sure he will understand. And in any event, I will take you to court tomorrow, if you like, and no doubt you can speak to him during a recess."

CHAPTER IV

A Reluctant Character Witness

The next thing that Alice remembered was that she and the knight were mounting the steps of the courthouse once again. She had no recollection of how she spent the night—or indeed how many nights intervened between the incident at the Unicorn and their return to court.

As they reached the top of the steps, Alice noticed a strange, but oddly familiar, character standing near the door. He was a short man, and he was wearing a large, plum-colored top hat, fully a third as tall as he was. A card was stuck in the hat band, which appeared to be a price tag, although the numbers did not seem to relate to any currency Alice recognized.

Alice asked the knight, “Do you know that strange man?”

“Certainly,” he replied. “That’s Hatta. He’s one of the stockholders in the Unicorn. He must be here for the trial today.”

Alice wanted to say, “What trial?” But before she could get the words out, Hatta approached them and began to speak.

“Oh, isn’t this terrible,” he exclaimed. “My wife’s own brother; disgraced us all; and not the first time either!”

He was speaking rapidly and rather breathlessly, and Alice had a hard time following it. She whispered to the knight, "What is he talking about?"

The knight answered her question, in his way, by addressing the perturbed little man: "You're speaking, I assume, about Haigha. I hear he's on trial today for embezzlement—that unfortunate business at the Unicorn."

"Yes," said Hatta, still breathless. "It's just awful. Oh, here he comes now," he cried, pointing down the steps. "I hope he doesn't stop to speak to us. I really want nothing to do with him."

Alice turned to see Haigha approaching. She recognized him from the inn, and she also recognized, accompanying him, Tweedledum—or was it Tweedledee? As he reached the top of the steps, Haigha detached himself from his companion and came over to them. He nodded to the knight and Alice and spoke to Hatta.

"I'm glad you're here, brother-in-law," he said. "I'm going to call you as a character witness." Having said this, he quickly darted away inside the courthouse, before Hatta had a chance to respond.

Hatta sputtered, red in the face. "Character witness! Quite a character I could give him! You know, I took him into my hat business first. They may call me 'The Mad Hatter', but I'm not such a fool. That 'Mad Hatter' business sells lots of hats, believe me. I've never been a spendthrift like some people, so I've put away a bit of money in my time. I let him run the shop most of the time, when he'd shown he could do it. But after a while I began to notice things—bills weren't paid on time, and the receipts weren't what they had been. Finally, I caught him at it—skimming a little off every week into his pocket when he thought my back was turned.

"I fired him, and I had him arrested. But my wife raised such a fuss that I dropped the charges. She wailed

and screamed that the shame of it would kill her. I hushed it up for the sake of the family reputation. I don't believe anyone knows about it.

"He went out and got a job as a barman at an inn. Being a barman may not be much of a job, but you have to have a reputation for good character to get it. I never said a word to hurt his chances. And then, about two years ago, he came up with this proposition to build the Unicorn. Naturally, I wanted no part of it, but my wife nagged and nagged, and he did seem to have changed, reformed you might say. So I finally agreed to put up most of the money."

The poor man began to sob, and tears streamed down his cheeks. The knight had to hold on to him, or he probably would have collapsed right there on the steps.

The knight remarked, "I think we had best take him over to the Unicorn and calm him."

The knight took his right arm and Alice his left, and together they led him across the square and sat him down at the window table, where they had previously talked with Humpty Dumpty. He continued to weep and carry on for some time, but finally they succeeded in quieting him.

Just as he became calm, Alice looked up and saw a strange figure enter the inn. He was dressed in a bright red uniform, but his face looked exactly like a frog's. Alice nudged the knight and asked, "Who, or what, is that?"

"That, my dear," the knight replied, "is the bailiff from the court. I suspect he has come for our friend here. I suggest we accompany him. His testimony in this case should be very interesting."

The knight was right, as the frog-like figure (speaking, Alice noted, in a very frog-like voice) quickly informed Hatta that he was summoned to testify as a witness in the case of Crown vs. Haigha and that he was there to escort him forthwith to the court.

Alice and the knight went along with them across the

square and entered the courtroom. As they entered, the bailiff called out in a loud croak, "Hatta, called as a witness for the defendant."

Hatta was led to the front, where he stood holding a railing and facing the courtroom. Alice noticed that Humpty Dumpty was again on the bench, and that Tweedledum and Tweedledee were seated on opposite sides facing him, although from the back she could not tell which was which. Whichever one was on Alice's left rose and began to question the witness. The first few questions were merely about such matters as his name and address. After that, as nearly as Alice could recall, the questions and answers went something like this:

Question: "Are you acquainted with the defendant, Haigha?"

Answer: "Yes, of course."

Question: "How long have you known him?"

Answer: "Well, let's see. It must be over twenty years."

Question: "Have you and the defendant lived in the same community during the twenty years you have known him?"

Answer: "Yes."

Question: "And are you familiar with his reputation in the community?"

Answer: "Certainly."

Question: "And what is his reputation for honesty?"

Answer: "His reputation is good, but . . ."

Question (interrupting): "Would you say, in fact, that his reputation for honesty was excellent?"

Answer: "Yes, but . . ."

At this point, the questioner interrupted again, saying, "Thank you, Mr. Hatta, that is all."

Hatta was still trying to say something when the questioner turned and sat down. As he did so, he faced

Alice, who was seated near the front. She caught a glimpse of his tie pin and could see it was Tweedledee.

Tweedledum (Alice assumed) rose immediately and stood where his twin had been. The questioning began again. "Mr. Hatta," said Tweedledum, "have you ever heard that about twenty years ago the defendant was arrested for embezzlement?"

Before poor Hatta, who seemed to be quite startled by the question, could say a word, Tweedledee was on his feet calling out, "Object, if Your Honor please!"

The Chief Justice responded with equal speed: "Counsel will come with me to my chambers." Then, turning to Hatta, he added, "The witness may stand down until we return, and the Court is in recess. The jury may remain seated, as the recess will be brief." With this, the Chief Justice and the two twins exited through the rear door of the courtroom.

The recess was, as the Chief Justice had said, brief. In not more than three minutes, Tweedledum and Tweedledee returned to their places; Humpty Dumpty was seated again on the bench, and he addressed the courtroom, saying, "I am going to allow the question. I caution you, Mr. Hatta, to listen carefully to the question and answer it yes or no. Under no circumstances are you to elaborate. And I caution the jury that they are to consider the question and the answer to it, not as indicating whether or not the defendant has previously been arrested—a matter entirely irrelevant to this case—but solely in evaluating the witness's testimony as to the defendant's reputation. Counsel may repeat the question."

Tweedledum rose, cleared his throat, and, in a voice full of portent, asked, "Have you ever heard that, about twenty years ago, the defendant was arrested for embezzlement?"

Silence fell on the courtroom. No one seemed to be

breathing. Hatta squirmed and clutched the railing so hard that Alice feared he might injure his hands. Finally, he turned to the Chief Justice and in a hoarse and barely audible voice asked, "I must answer yes or no, Your Honor?"



"Yes sir," Humpty Dumpty thundered, "you heard me correctly the first time."

"Well then, no," Hatta gasped. Having managed to force these words out, he let go of the railing and fell to the floor.

The bailiff and Tweedledum virtually carried him down and deposited him at Alice's feet. Tweedledum whispered to the knight, "You had best take him out and try to revive him."

Alice did not want to miss the rest of the trial, but she did feel sorry for the poor little man. So, reluctantly, she took one of his arms and helped the knight lead him out of the courtroom. They took him back to the Unicorn. A few

sips of brandy revived him physically, but it was almost an hour before he regained his composure.

Finally, Alice thought he was calm enough to ask him about the incident in the courtroom. "I don't understand," she inquired, "why you answered 'no' to the question about Haigha having been arrested. You had just finished telling us out on the steps how you, yourself had him arrested many years ago."

Hatta burst out crying once again. When they quieted him he looked at Alice dolefully and said, "You recall that the judge told me very sternly to listen carefully to the question and answer it yes or no. I was terrified that something awful would happen to me if I said the wrong thing. If the question had been, 'Do you know that Hatta had been arrested?' of course I would have answered yes. But he asked me, 'Have you *heard*?' I never *heard* anything about it. As I told you, the whole thing was hushed up. Nobody knew about it, so nobody ever spoke about it. So the only honest answer I could give was no."

"I never thought about it that way," said Alice. "I wonder why Tweedledum ever asked the question in such an idiotic fashion."

"The question was in proper form," the knight interjected with a sharp tone to his voice, "and the answer too was quite correct. But here comes Tweedledum now; you can ask him yourself."

Alice looked up just in time to see Tweedledum and Tweedledee trying to squeeze through the front door side by side. While the opening was wide enough to allow two normal people to pass, their girth was such that they couldn't quite fit on the first attempt. They stepped back and hesitated. Neither seemed inclined to go first. Finally, they turned back to back and side-stepped through the door together.

The knight motioned to the twin facing them (Alice

was not close enough to see which was which), and they came over and took the two empty seats at the window table.

After they had seated themselves, the knight asked, "How is the trial going?"

Both twins began to speak simultaneously. "The jury is out. We are waiting for the verdict," they said in unison.

"And what do you think the verdict will be?" Alice asked.

They both began talking simultaneously again, but this time not in unison.

"Guilty," said Tweedledum.

"Not guilty," said Tweedledee.

Tweedledee added, turning to Hatta, "Your character testimony helped your brother-in-law's defense considerably."

Hatta groaned.

Alice turned to Tweedledum and said, "I don't understand that so-called character testimony at all. Please don't think me rude, but the questions both of you asked seemed very strange to me. Hatta has told us the whole story about Haigha, and it is clear that his character is terrible. But, somehow, your questions seemed to miss the point entirely."

"I am not surprised at your confusion," Tweedledum replied. "The law regarding character testimony does seem strange to those who are not familiar with it. Why, you should have heard what the Chief Justice said about it in chambers this morning!"

"Oh, tell me," said Alice. "I am dying to know why you all went out in the middle of everything like that, and what happened back there."

"It is very simple," Tweedledum answered. "I asked the witness if he had heard that the defendant had been arrested previously. The question would have been most improper, if I did not have evidence that he indeed had been

arrested. The Chief Justice naturally had to ascertain—out of the presence of the jury, of course—if my question was *bona fide*.”

Alice interrupted him. “There are already several things I don’t understand.” When she saw the look of annoyance on Tweedledum’s face, she paused, and then continued, “But please do go on. I am sure it will all become clear to me when I hear your full explanation.”

“Well,” said Tweedledum, “as the king’s prosecutor, I had a copy of the arrest record. When we went back into the judge’s chambers I showed it to the Chief Justice and to my colleague, and they of course agreed that the question was proper. But that was when the Chief Justice made this amazing statement about character evidence.”

The other twin interrupted, saying, “I was so interested in what he said that I wrote some of it down after we got back in the courtroom—while all that commotion was going on. He said that the whole procedure was ‘anomalous’, ‘illogical’, ‘at its very best a tricky line of inquiry as to a shapeless and elusive subject matter and at its worst a Pandora’s box of irresponsible gossip, innuendo and smear’. But then he added that ‘to pull one misshapen stone out of the grotesque structure is more likely simply to upset its present balance between adverse interests than to establish a rational edifice’. And then he said he would allow the question—but just that one question. And then we all came back into the courtroom, and he cautioned the jury in the usual manner, and you saw the rest of it.”

“It’s all perfectly clear now, isn’t it?” said Tweedledum. “Except, of course, for the Chief Justice’s strange outburst about a perfectly normal procedure which our law has followed for as long as I can remember.”

“Oh I can understand what Humpty Dumpty said all right,” Alice responded, “but the rest of it isn’t clear to me at all.”

The others appeared startled, and it took Alice a moment to realize that her familiar use of the Chief Justice's name was the cause. By this time, however, she was so engrossed in the subject that she did not pause long.

She continued, "There are so many things I don't understand that I'm not sure I can remember them all, but I'll try to begin at the beginning. First, I don't understand why, since you had the evidence that Haigha had been arrested before, you didn't just read that evidence to the jury. As it was, all this nonsense about what poor Hatta had *heard* only served to confuse everything."

The twins again started to speak at once. This time the knight had to intervene. "Tweedledum, as the king's prosecutor, you are entitled to speak first."

Tweedledee withdrew gracefully. Tweedledum continued on in his best courtroom voice. "What is commonly called character evidence is really evidence of reputation. The only evidence the law permits about a person's character is testimony concerning his reputation in the community. The questions you heard my distinguished colleague ask in the courtroom this morning were the traditional questions asked of a character witness: how long he has known the person about whose character he is testifying; if he lives in the same community; if he knows others in the community who are acquainted with the person and know his reputation; if he is familiar with the person's reputation for honesty—or for sobriety, truthfulness, or whatever character trait is being proved—and finally he is asked what that reputation is; and that is all."

"That is ridiculous," Alice said, interrupting with some passion. "Reputation is the shallowest sort of measure of character. The case this morning is a perfect example of the stupidity of your law. Haigha apparently is a confirmed thief; Hatta knows he's a thief; but you wouldn't permit him to say so, because all you asked was about his reputation."

Tweedledee, obviously feeling it was his turn to take up the argument, replied, "You say he's a thief, meaning I assume that he has committed the crime of theft one or more times in the past. But what if he denies it, and in this case Haigha, being my client, most certainly does. If you were to be permitted to testify about past crimes which he supposedly committed, certainly he must be permitted to offer evidence to show his innocence of those crimes. And you can see I am sure that if this sort of irregular procedure were to be permitted, you would quickly find that, instead of his being on trial for one crime, he would be on trial for two or more. The trial—any trial—would become completely unmanageable. Reputation is the only measure of character which can be proved with a reasonably circumscribed amount of testimony and in a manner which is fair to both sides."

"That explanation doesn't satisfy me at all," said Alice, rather surprised at her own vehemence. Fearing that she might be offending her companions, she caught herself and continued in a gentler vein. "Explain to me what the judge told the jury. I didn't understand that either."

This time Tweedledum and Tweedledee both hesitated, each obviously waiting for the other to speak first. The knight finally filled in the silence. "You see, my dear, the Chief Justice, having decided to allow the question about Haigha's arrest, had to caution the jury lest they get the wrong impression. The only issue involved is Haigha's reputation, as these learned gentlemen have just explained. Whether or not he had in fact been arrested was not something the jury should properly consider. Therefore, he cautioned the jury not to take the question to indicate that the defendant had been arrested but to consider the question only in evaluating Hatta's testimony as to the defendant's reputation."

"This time," Alice thought, "I am going to ask my

questions calmly and not offend anyone." She continued, aloud, "Tweedledum (or was it Tweedledee) told me a moment ago that the judge would allow the question only after he had seen evidence that Haigha had really been arrested. If that is so, why did he tell the jury not to think about it? If it is so unimportant whether Haigha were really arrested, why go to all the bother of going out of the courtroom and discussing it in private and all that?"

Tweedledum managed to be the first to respond this time, and the others yielded to him. "If I had asked that question," he said, "without having very clear evidence that there had really been an arrest, I would have been guilty of the worst kind of prejudicial innuendo, and I would deserve censure. The judge would then have had to instruct the jury to disregard the question if indeed he did not declare a mistrial. That is why he had to call us back into chambers to ascertain if there was good basis for my question."

Alice interrupted once more. "I can understand that well enough. Certainly, your question seems to imply that Haigha had been arrested. One does not usually ask if you have *heard* about something, unless that something really happened. What I don't understand is why, having gone to the trouble to find out that it was true, do you then tell the jury not to think about it. Doesn't the jury have to decide the case? Aren't they entitled to know what's going on?"

Tweedledum answered calmly and patiently. "You see," he explained, "the jury mustn't think about a defendant's previous arrests. In the first place, an arrest doesn't prove he was guilty of anything. Only a trial and conviction can establish guilt, and in this case, as a matter of fact, Haigha never was tried before, since the charges were withdrawn. However, some members of the jury might not be sophisticated enough to appreciate that.

"In the second place," he continued, growing more oratorical as he went along, "even if he were guilty of the

prior crime for which he was arrested, this should not necessarily indicate guilt of the crime for which he is now on trial. After all, a person can reform, and if he does, his past sins should not be held against him."

Alice sighed and said, "All right. You have almost convinced me that the jury should not think about the arrest; they should put it out of their minds. But how are they supposed to do that? Once you've heard about something, you can't just put it out of your mind like that. At least, my mind doesn't always do what I tell it to so obediently."

"You are quite right," said Tweedledee. "The mere asking of the question plants a doubt about the defendant's character in the jury's mind. I am sure that was why my brother asked it, meaning no disparagement of him. That sort of thing is done all the time, of course. This is what the Chief Justice was referring to in his criticism of the whole procedure, when he spoke of 'a Pandora's box of irresponsible gossip, innuendo and smear'."

Alice was still thinking about trying to put things out of her mind. She continued thinking out loud: "Of course, the Chief Justice didn't tell the jury to put the question out of their minds entirely. He said they could consider it for some purpose, although exactly what purpose baffles me. Thinking about something for some purposes, but not for others, seems even harder than trying not think about it at all. It's about like trying to pat your head and rub your tummy at the same time. I never could do that."

"It's really very simple," said Tweedledum. "The answer to the question may help the jury to evaluate the witness's testimony that the defendant's reputation for honesty is good. For example, if he had answered, 'Yes, I have heard that the defendant was arrested,' this would indicate that the defendant's reputation for honesty wasn't really so good after all."

Tweedledee interjected, "It might just indicate that the defendant was the victim of false rumors; that's the problem."

"Well," Tweedledum answered smoothly, "if he were the victim of false rumors, that would still affect his reputation, and it is his *reputation* you were trying to prove."

"But he answered no," Alice said. "What is the jury supposed to take that to mean?"

"It means, of course," Tweedledum responded, "that the defendant's good reputation was unsullied by any reports about arrests."

"It could mean," said the knight, "that the witness was badly informed about the defendant's character."

"And it could mean," said Tweedledee, "that the witness is a liar—that he really had heard about the arrest but was concealing it out of a desire to help the defendant."

Hatta, who had been silent throughout this long discussion, suddenly exploded. "What he really means," he shouted, "is that I was being made a fool of."

Tweedledee reached over and took Hatta's hand, trying to comfort him. "You must not think that, my good man," he said. "Actually, you were an admirable witness. You answered the questions put to you very accurately. You'd be surprised how many witnesses can't seem to do that. No, you should be proud of yourself."

"What is the jury supposed to learn from my testimony?" Hatta asked, somewhat calmer now. "I feel that, in trying to tell the literal truth, I ended up telling the worst possible lie."

Tweedledum joined in the effort to comfort the unfortunate little man. "I don't think you need worry about it too much," he said. "In my experience, character testimony rarely makes much difference, except perhaps in a very close case. In fact, calling you as a character witness

was an act of desperation on the part of my brother, although it was very clever of him."

He was interrupted by the appearance of the bailiff, who informed them that the jury was returning. Tweedledum and Tweedledee hurried off with him, and Alice and the knight rose to follow them. They urged Hatta to come along, but he emphatically vowed that under no circumstances would he re-enter the courtroom. Since he still seemed quite upset, Alice and the knight decided they should not leave him alone.

They were all silent for a moment after the twins left. Alice was still trying to sort out in her mind all the confusing events of the day. Finally she broke the silence. "I am still trying to figure out," she said, "what the jury could have understood Hatta's answer about the arrest to mean. It's complicated, because they don't know what I know. I've been trying to put out of my mind those things that I learned that the jury isn't supposed to know about—the things Hatta told us on the steps of the courthouse. I gather putting things out of their minds is what juries are supposed to do. It isn't so easy, you know."

The knight replied, rather thoughtfully, "For one trained in logic, it is simple enough to frame premises which contain only facts that have been clearly established and then proceed by deduction to the correct conclusions. In this manner, it is possible to eliminate extraneous information or speculation from the reasoning process, even if one does not actually 'put it out of one's mind'. However, I suppose that most jurors aren't rigorously trained in logic, and I don't really know what they do with instructions from the court not to consider certain matters—to 'put them out of their minds', as you say."

"Why then," Alice asked, "do judges give such instructions?"

"I suspect," the knight responded, "that the same

questions were troubling the Chief Justice when he made that speech in chambers this morning that Tweedledum and Tweedledee told us about. The question certainly suggested that there was something disreputable in Haigha's past—an innuendo as the Chief Justice said. Then the jury is told not to consider whether or not it really happened. Nobody is really sure to what extent they obey that instruction. However, the Chief Justice obviously considered the alternatives and decided they were worse."

"That I don't believe," Alice asserted. "Why can't you just let all the facts come out?"

"Letting all the facts come out," the knight replied patiently, "is one of those phrases that sounds fine when you say it, but when you try to apply it in practice, it is not so simple. For example, in this case the facts which you would let the jury consider concern an arrest over twenty years ago. Was Haigha innocent or guilty of the crime for which he was arrested? Since it happened twenty years ago, that would be difficult to establish. Some of the witnesses may be dead. Those who are still alive may not remember the facts too clearly after all these years.

"Even if Haigha's guilt or innocence of an ancient crime could be established, think how long it would take. And what would it really prove? If he was guilty of some crime many years ago, that does not prove that he is guilty of a different crime today. And if he was falsely accused before, does that mean that he is falsely accused today? No, letting all the facts come out is not worth all the effort involved."

"If that is so," said Alice, "why permit such questions to be asked at all?"

The knight, still patient, spoke slowly and carefully as he answered Alice's question. "Whether you realize it or not, your question really has two parts. First, you are asking, 'Why permit character evidence at all?' I suppose

one must put himself in the defendant's position. I have led, I trust, an honest and upright life. My neighbors would certainly attest to my good reputation. If I were suddenly accused of a crime, it might be difficult for me to defend myself against false charges. In that situation, I would certainly want to be able to prove to a jury of complete strangers that my character is such that I would be unlikely to commit the crime of which I am accused.

"The second question," the knight went on, "is why permit character witnesses to be cross-examined with questions such as, 'Have you heard that the defendant was arrested 20 years ago?' This type of question opens up the possibility of innuendo which the Chief Justice was concerned about.

"The problem is, if character testimony is to be permitted, cross examination must also be permitted. Cross-examination is our method of testing a witness's veracity. Without it, there would be no way of knowing how truthful the testimony really is. I can't imagine any other sort of cross-examination that would be any better. Questions about what the witness may have heard about the defendant do certainly test his knowledge of the defendant's reputation and cast light on how good or bad that reputation really is."

Alice had lots more questions forming in her mind, but she didn't get a chance to ask them. Tweedledum and Tweedledee entered the door, arguing loudly about something as they came.

"What happened?" the knight asked, when there was a pause in the disputation.

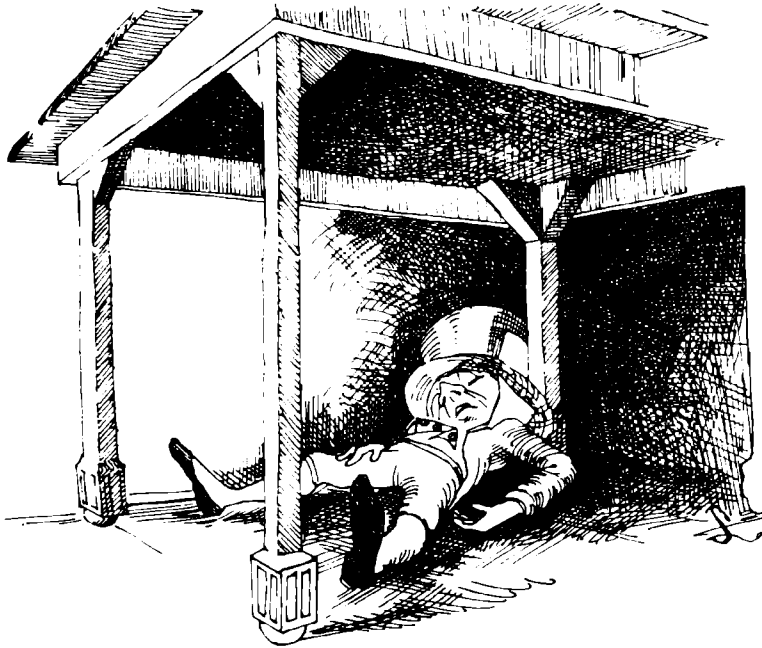
As usual, both began talking at once. All Alice could understand out of it was "hung jury". Finally, Tweedledee paused to take a breath, and Tweedledum was able to continue solo.

"When the jury came back, we thought they had

reached a verdict, but they only returned to report they were hopelessly deadlocked. It seems that the vote was eleven to one for conviction. The Chief Justice dismissed them."

While Tweedledum was saying this, Tweedledee was laughing. Between gradually subsiding chuckles, he went on with the tale. "We talked to the one juror who held out," he said. "He was convinced that my brother here, the king's prosecutor, was unjustly trying to convict Haigha because he had falsely implied that Haigha was guilty of embezzlement once before. Hatta's emphatic 'no' persuaded him my brother was making false innuendoes."

In the excitement, nobody noticed right away that Hatta had fainted once again and was underneath the table.



CHAPTER V

The Rules of the Game

When Hatta was revived one more time, the knight left the inn with him to see him safely home. Alice remained with Tweedledum and Tweedledee. They were talking among themselves, and Alice heard them say something about “the game this evening”. From the context of the conversation, Alice had the impression that they were not mere spectators but were, in fact, players in “the game”. Alice could not picture the two rotund little men engaging in any sort of sport, and she was becoming more and more curious about the nature of “the game”. With these two, it was difficult to find any gap in the conversation through which she could slip in a question, but finally an opportunity arose.

“What is this game you play?” Alice asked. “Is it some form of athletic contest?”

Both twins laughed. Alice had never heard two people laugh in unison before, and the effect was quite comical, so she joined in their laughter. When the laughter stopped, they answered her, more or less in relays.

“Goodness no,” said Tweedledee.

“It is a form of intellectual sport,” Tweedledum continued.

Tweedledee again: "We call it 'Perpetuity'."

"You must come and watch," said Tweedledum.

Tweedledee went on, "We play in the back room here at the Unicorn."

"My brother and I are one team," said Tweedledum.

"And the Chief Justice and your friend, the knight, are the other," his twin added.

Alice interjected, "I would think the Chief Justice would be the referee."

Both twins laughed at this observation. "We tried that," said Tweedledee, "but he kept trying to change the rules."

"Now the Queen is referee," Tweedledum added. "She doesn't understand the rules at all, but it doesn't really matter."

"What are the rules?" Alice asked.

"They are rather complicated," Tweedledum replied. "In fact, the Chief Justice once said that he had 'fallen into the net which the rules spread for the unwary'—one of his nicest phrases I think. The basic rule is a life in being plus 21 years."

"A life in being plus 21 years," Alice repeated. "That doesn't make any sense to me at all. What does it mean?"

"You see," said Tweedledee, "the object of the game is to make a last will and testament which will keep one's property out of the control of one's heirs as long as possible. Only, the maximum is a life in being plus 21 years. The team that succeeds in tying up property the longest without exceeding the maximum wins the game."

"What a gruesome game," Alice exclaimed. "I can't imagine making a game out of one's will."

"It's really very jolly," said Tweedledum. "You must come tonight. Join us for dinner now; we just have time before the game."

The twins called a waiter over to their table and

proceeded to order dinner for the three of them. The conversation during dinner between Tweedledum and Tweedledee was animated, but Alice did not understand any of it, except to surmise that they were planning some sort of strategy for the game that evening. As they were finishing the dessert, the knight and Humpty Dumpty entered together and joined them.

Humpty Dumpty greeted Alice warmly, saying, "I am delighted to see you once again, young lady. Are you going to witness our little combat? Perhaps you will bring my companion and me luck. I fear we have not been doing too well of late and could use some fresh support."

Alice responded, "I doubt I could be much help. These gentlemen have been trying to explain the rules of your game to me, but I am incapable of understanding them."

The Chief Justice laughed. "You must not feel badly about that," he said. "There is something in the subject which seems to facilitate error. Perhaps it is because the mode of reasoning is unlike that with which most of us are familiar. A long list might be formed of the demonstrable blunders with regard to the rules made by eminent men, blunders which they themselves have been the first to acknowledge. No, the rules are a technicality-ridden nightmare; that's what makes the game such great sport."

The conversation was interrupted by the arrival of the Queen. Alice recognized her at once; she was dressed entirely in red and was wearing her crown. The knight introduced Alice to her. As she extended her hand for Alice to kiss, she said, "You must sit with me, young lady, and help me to judge the contest."

"That is very kind of Your Majesty," Alice replied, "but I fear I will be of no assistance to you. I know I shall never understand the rules."

"Nonsense," said the Queen. "The rules are whatever I say they are; that's simple enough. And in any event, these

four will argue incessantly about the rules. All one has to do is decide which of them to believe."

"In the few days that I have been here," Alice said, "I have been listening to them argue most of the time. I often can't decide which is right and which is wrong. Your majesty must be much better at that sort of thing than I could ever be."

"I still say nonsense," the Queen snorted. "After all, it's only a game. Since I am the judge, the rules are whatever I think is right. Any fool can understand that."

Humpty Dumpty intervened in the discussion, saying smoothly, "Your Majesty has discovered the first principle of an eminently sound system of jurisprudence. However, we are here to play the game, not to discuss jurisprudence. Shall we get on with it?"

With this, he opened a door in the rear of the inn dining room immediately behind their table, revealing a small back room. The room was furnished like a small courtroom. At one end was a raised platform, partitioned in front like a judge's bench. Facing it were two tables with two chairs at each, and behind them was one row of chairs, separated from the area of the tables by a railing. The knight brought in a chair from the dining room and placed it next to the large upholstered chair on the platform. Alice and the queen were seated there, and the others took their seats at the tables facing them—the knight and Humpty Dumpty on their left and the twins on their right.

When all were seated, the queen banged on the bench a few times with a gavel and announced, "The game is called to order. I believe it is Tweedledee and Tweedledum's turn to go first this evening. One of them—I never know which is which anyway—may now proceed."

The twins rose from their seats simultaneously, glared at each other, and then sat. The queen broke the impasse by saying, "Tweedledee may go first."

Tweedledee rose again, withdrew a paper from his breast pocket, and addressed the group. "The Duke of Mortmain, by his will, devised all his estate to trustees to collect the rents and profits and pay the net rents, income and profits thereof semi-annually in equal shares unto his son, Sir Usufruct, and his daughter, Griselda, for their joint natural lives; immediately after the death of Griselda, if she should predecease Sir Usufruct, the trustees are directed to pay the whole of the net rents, income and profits to Sir Usufruct for his natural life; and if Sir Usufruct should predecease Griselda, then the trustees are directed to pay an annuity or yearly sum of Five Hundred and Twenty Ducats to the support and maintenance of the Duke's granddaughter, Rosamund, during the life of his daughter Griselda, and the balance of the net rents, income and profits to Griselda for her natural life. Upon the death of the survivor of Sir Usufruct and Griselda, the annual rents, income and profits are payable equally share and share alike to the Duke's grandchildren, including his said granddaughter, Rosamund, for and during their respective natural lives, and upon the death of each grandchild, as it shall occur, the share held in trust for the grandchild so dying is payable, free of trust and absolutely to the Duke's great grandchildren, share and share alike.

"The Duke's will goes on, and I quote, 'If it shall so happen that one of my said grandchildren shall predecease my said son and daughter or the survivor of them without leaving a child or children, him or her surviving, then and in that event, I direct that the net rents, income and profits shall be equally divided among my grandchildren living at the time of the death of the survivor of my son and daughter, but if either of my said grandchildren shall predecease my said son and daughter or the survivor of them leaving a child or children, or descendants of a child or children, him or her surviving, then and in that event, I

direct that the share or portion of my estate and property which would have been held in Trust for the grandchild so dying if she had not predeceased my said son and daughter, shall be paid and delivered to the child or children or descendants of a child or children of such deceased grandchild, absolutely free and discharged of this trust.”

Tweedledee sat down, and Tweedledum began clapping and cheering and shouting, “This one’s our masterpiece; nobody can ever top this.”

To counter his applause, the knight began booing and stamping his feet, and Humpty Dumpty shouted back, “Fool! Fool! You’ve violated the rule.”

The Queen began pounding vigorously with the gavel and calling for order. When they were almost quiet, she said, “Tell me about the duke’s family. I can’t decide without knowing who they are.”

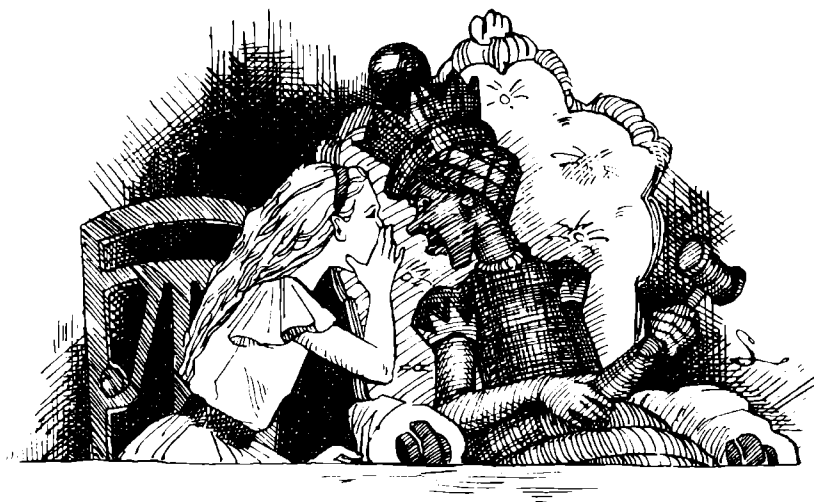
This time Tweedledum rose and addressed the assembly, saying, “The duke made his will when he was a widower, 82 years old. He died eight years later. At the time he made his will he had two living children, Sir Usufruct, then 53 years old, and his daughter Griselda, who was 58 years old. Sir Usufruct had one son, who fell off his horse and died 20 years before the duke made his will. Griselda, who was married to the Baron of Barataria, had three daughters, Rosamund, Florabelle and Ivy, all living at the time the duke made his will. Each of the granddaughters had children, but we do not believe that it is important whether or not they were born before or after the duke made his will.

Humpty Dumpty was on his feet before Tweedledum had finished. As Tweedledum sat down, he began to orate. “Your majesty, it is, I believe, my turn to speak regarding this will proposed by the opposing team. It is, I must say, with all due respect to these learned gentlemen, a most preposterous scheme, which clearly violates the rule of ‘a

life in being plus twenty-one years'.

"Consider the number of generations through which they seek to perpetuate this trust. It goes on for the lives not only of the children of the testator, the Duke of Mortmain, but for the lives of his grandchildren, and only when the last of his grandchildren have died does the trust terminate and the property become free of trust in the hands of the great grandchildren."

Alice whispered to the Queen, but loud enough so that it could be heard, interrupting Humpty Dumpty in his



oration: "He explains it quite clearly. I couldn't understand half of that mumbo jumbo when Tweedledee recited it. Now I am beginning to understand."

Humpty Dumpty coughed to get the Queen's attention. Then he continued. "The vice in this will, your majesty—or perhaps I should say the critical vice, since in our view it is full of vices—is the continuation of the trust during the lives of all of the duke's grandchildren. Since the Duke's son and daughter were still alive and could have more

children, they may have more children after the duke's death. It is possible that grandchildren born after the duke's death could live for many years after the deaths of all of the duke's surviving relatives. Assuming there were such a grandchild, the trust would continue throughout his or her lifetime, and the property would not vest in the great grandchildren until the death of a person not in being on the duke's death. Therefore, the trust extends more than a life in being plus twenty-one years, and the rule has been violated. Our adversaries should forfeit the game."

Tweedledee was on his feet, obviously bursting with impatience for Humpty Dumpty to finish so he could answer the Chief Justice's argument. The Queen looked hard at him and said, "All right, Tweedledum, I'll hear what you have to say."

"I'm Tweedledee, Your Majesty, begging your pardon," the twin said.

"Well, no matter," replied the Queen. "I never could tell you apart. I'll listen to either one of you, but mind you don't both talk at once."

"Thank you, Your Majesty," said Tweedledee. "May I point out to Your Majesty and these learned gentlemen that the duke's daughter was 58 years old when he made his will. Sir Usufruct, the duke's son, was 53 and had been childless for 20 years since his young son died tragically. The duke's three granddaughters were grown women. One of them, Rosamund, was specifically named in his will. Obviously, the possibility of the duke's having more grandchildren was so remote as to be non-existent. When the will speaks of grandchildren, it should be construed to refer only to the three granddaughters, Rosamund, Florabelle and Ivy, all of whom were alive when the duke died. Since the trust would terminate on the death of the last of the three of them to die, it cannot extend beyond a life in being. Therefore, the rule has not been violated."

The Queen whispered to Alice this time. "Well, young lady, you said you understood this business. What do you think?"

Alice replied, also whispering, "The trouble is, Your Majesty, they both talk so well that each one convinces me, at least until I've heard the next. But I must say that the part about the duke's daughter being 58 and the son not having a child for 20 years is awfully convincing."

The Queen frowned and looked undecided. She turned to the knight and said, "Sir Knight, you have been silent all evening. I want to hear from you."

The knight rose slowly and said, "Your Majesty, the problem is really quite simple. Common sense might indicate that the duke would have no more grandchildren. If that were so, then the trust ends after the lifetimes of his three grandchildren who were 'in being' when he made his will. The rule of 'a life in being plus twenty-one years' is not violated, and our opponents are right."

Alice could not help interrupting. "Which side are you on?" she asked.

"Hear me out please," the knight responded. "I said, 'common sense might indicate'. But in this game common sense has no place. We play by the rules, and the rules say nothing of common sense. As a matter of fact, Rule 11 says that a woman is presumed to be capable of having children regardless of age. That rule may defy common sense.

"In this case, even common sense tells us that there is no limit on the age at which a man might father a child. So, what of Sir Usufruct, only 61 when his father died? Our friends neglected to mention whether or not he was married, but no matter. Old lords have been known to bed new and younger ladies, both licitly and illicitly. No, the possibility of Sir Usufruct producing more children, who would be the duke's grandchildren, cannot be denied. And, may I point out that the mere possibility of the estate's not

vesting, that is, the duke's property not coming into someone's full possession, free of a trust—the mere possibility of this not happening within a life in being plus twenty-one years is enough. If this possibility exists, the will violates the rule."

The knight ended his speech with a rising cadence and sat down. Alice turned to the Queen and asked, "May I ask a question, Your Majesty?"

"Certainly," the Queen replied, "but whichever one of these four you ask, be prepared for another lengthy speech."

"I'm confused," Alice continued, looking at the knight. "Everyone keeps referring to the rule as 'a life in being plus twenty-one years', but you seem to ignore the twenty-one years. If a grandchild is a life in being, wouldn't Sir Usufruct have to have a child more than 21 years after the will was made to violate the rule?"

The knight answered her, "Assuming you count the period of time before the grandchild is born, it would be the time from the duke's death that matters, not from the date the will was made. Let's see: Sir Usufruct was 53 when the duke made his will; eight years later, when the duke died, he would have been 61; twenty one years after that he would be 82. That is still not too old to father a child. It may be rare, but it is possible, and that is all that counts."

Tweedledum and Tweedledee were both on their feet together, trying to get the Queen's attention. She waved them down before they could say more than "Your Majesty".

"No more argument," said the Queen. "I want to hear the other team's will. Then I'll decide both together."

Humpty Dumpty stood up, smiling and obviously prepared to deliver a grand oration. "Lady Annabelle," he began, "a wealthy and aristocratic landowner, known however to be quite eccentric, lived in a large manor house not far from here. Her fondness for animals, many species of

which she kept about her domain, was well known. Her lack of fondness for people in general, and for all of her relatives in particular, was equally notorious.

"Upon her recent demise, this curious will was discovered. Its few brief paragraphs provide that her entire estate is to be held and the income used to care for all of the pets and domestic animals which she kept upon her properties. When the last of these animals has expired, the estate is to continue to be held and the income accumulated for twenty one years, at the expiration of which the estate is to be distributed to her heirs.

"Naturally, following her death, an inventory was made of the animals in and about the manor house. It is lengthy and diverse, and I will not bother you with all of it. One curious creature is of particular interest, however. Lady Annabelle kept a large turtle, apparently imported from some tropical clime. The creature wandered about the gardens, and it was even allowed in the house on special occasions. Lady Annabelle was known to be quite fond of the turtle, and even rode upon its back. The exact age of this animal is not known, since its birth was not recorded, as it doubtless took place upon some tropical reef or beach. However, it is widely rumored that this species lives for several hundreds of years. While I do not know the truth of these stories, I have been informed by an eminent zoologist that reliable scientific evidence established that one such creature died at the age of 151, of accidental causes I might add.

"It is therefore quite likely that those responsible for administering Lady Annabelle's estate will go on holding the estate and paying the income for the care of this turtle for many years, long after all of the other animal beneficiaries have died and quite probably well beyond the lifetimes of Lady Annabelle's now living descendants, and possibly beyond the lifetimes of the children of those



descendants. However, the estate will definitely vest and be distributed to Lady Annabelle's heirs within twenty-one years following the lifetime of the turtle; hence the will complies with the rule."

Before Humpty Dumpty could finish and sit down, Tweedledum and Tweedledee were both crying, "Shame, shame!" Even Alice, who had become quite used to telling the two of them apart, could not distinguish which of their other remarks were made by whom, but among other things she heard, "Imagine, a turtle! They're making a mockery of the game."

"I met a mock turtle once," Alice remarked, anxious to get into the conversation.

"Really," said the Queen. "That is not the sort of creature I would care to mix with socially."

"He was really very nice," Alice retorted, "and he recited poetry ever so well."

"Oh, do recite some of it for us," Tweedledee exclaimed. "We do love to hear poetry."

The Queen sighed. "I suppose it would be a relief from this nonsense."

"Actually," Alice said, "I'm not sure I can remember any of the mock turtle's poetry. I think one went like this:

"Can't we go a little faster," said a porpoise to the turtle.

"For I must produce some heirs while I am definitely fertile,

And I don't live on forever like some creatures I could name.

So we surely mustn't tarry, or we will not join the game."

Will we, won't we, will we, won't we, won't we join the game?

Will we, won't we, will we, won't we, won't we join the game?

"It's funny," Alice remarked, frowning, "but I remember it one way, and it seems to come out differently."

"Go on," said Tweedledee. "It has a nice rhythm."

"There are several more verses," Alice said. "Maybe I can do better with them.

Said the turtle, "You've no notion how delightful it would be,

To play the game and win the perfect perpetuity."

But the porpoise said, "Too far; too far! You're really without shame.

For reasons of longevity, you cannot join the game."
Cannot, may not, cannot, may not, may not join the
game.

Cannot, may not, cannot, may not, may not join the
game.

"I don't seem to be saying it well," said Alice.

"It doesn't make much sense," the knight commented.

"It makes good enough sense," said Tweedledum. "Go on."

"Well, I'll try," Alice said.

"It is rank discrimination," said the turtle, getting
wroth,

"If my life span is much longer than an aardvark or a
sloth,

I'm a creature, like all others, to be treated just the
same,

And I formally demand that you include me in the
game."

Get me, let me, get me, let me, let me in the game.

Get me, let me, get me, let me, let me in the game.

Alice sat down, still frowning, while they all applauded, Tweedledum and Tweedledee enthusiastically, and the others merely politely. When the din had subsided, Tweedledum was left standing, but before he could utter a further word, the Queen took charge. "You needn't give me one of your long speeches," she said, "because I have already made up my mind, and nothing any of you can say will make any difference. I don't care about your silly rules, but I am not upholding a will in favor of a turtle, and that's that."

Tweedledum smiled broadly and sat down. Humpty Dumpty rose and started to protest, but the queen, without opening her mouth, gave him a look which stopped him after the first word. For the first time in the evening, there was complete silence.

The knight finally broke the silence, saying, "We accept, of course, Your Majesty's decision concerning the will which we proposed. There is, however, the matter of the other will proposed by our adversaries. Your Majesty has not yet ruled on that one, and we submit that it too should be disqualified."

"Read it to me once more," said the Queen. Tweedledee read the Duke of Mortmain's will once again. When he had finished, the queen asked to have the last clause read one more time, and Tweedledee repeated it, as follows: "But if either of my said grandchildren shall predecease my said son and daughter or the survivor of them leaving a child or children, or descendants of a child or children, him or her surviving, then and in that event, I direct that the share or portion of my estate and property which would have been held in Trust for the grandchild so dying, if she had not predeceased my said son and daughter, shall be paid and delivered to the child or children or descendants of a child or children of such deceased grandchild, absolutely free and discharged of this trust."

"Just as I thought," the Queen said. "He said, 'if *she* had not predeceased my said son and daughter.' That shows that the only grandchildren he had in mind were the three granddaughters. He knew none of the grandchildren were males, but if he had intended to include some *grandson* born to his son at age 83, or whatever the knight's absurd example was, he wouldn't have said '*she*'. Therefore, I agree with Tweedledum and Tweedledee that the will only refers to the three granddaughters. For some reason, which I don't understand, and don't really care to know, I gather that makes it all right. In any event, I declare Tweedledum and Tweedledee the winners of the game, and I don't intend to hear any more arguments from anybody."

Having made this little speech, the Queen swept from the room, with Alice's hand grasped firmly in her own.

Alice had no choice but to stumble after her. Once outside in the main part of the inn, they could hear the arguments still continuing but could not make out the words, as everybody appeared to be talking at once.

The Queen patted Alice's hand and said, "That's enough of that for one night, my dear. They are all very clever, and I suppose that part about the turtle was intended to be amusing. However, they are really just like children, and I never could stand playing with children for more than a few minutes at a time. By the way, my dear, I am giving a ball tomorrow night at the castle. You must come. Everybody will be there."

Before Alice could say anything, the Queen let go of her hand and marched out of the inn, leaving Alice standing alone.

CHAPTER VI

The Knave's Cruel and Unusual Punishment

On the night of the ball, Alice arrived alone at the castle. She took careful note of the drawbridge as she entered, and, sure enough, it was still there, although the rust on the chains which supported it indicated that it had not been used since the reign of the present king's grandfather. Once inside, she ascended a broad flight of stairs to the main hall, where the ball was in progress. A herald, looking much like the bailiff who had summoned Hatta to court, only dressed even more grandly, with a large lace ruff about his neck, announced her. The immense hall was already filled with guests.

Alice looked about the room for one of her acquaintances. She could find none of them, but she finally did see a figure standing nearby whom she recognized. Positioned as he was in profile to the angle of Alice's sight, he appeared almost two dimensional. The long, curling moustache, the antique jacket with very full sleeves and the colorful hat upon his head were familiar. As he turned, and the large red heart emblazoned on his bodice became visible to Alice, she recognized the knave of hearts. She had last seen him

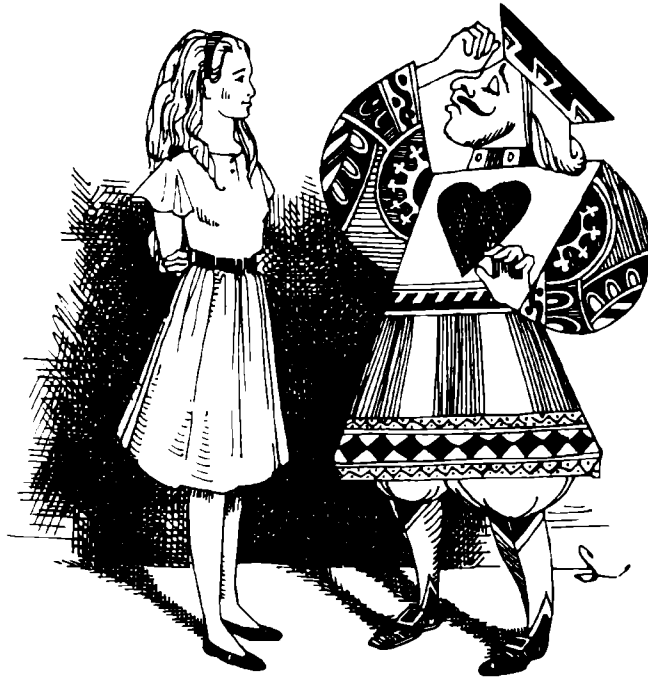
when she was a child, and he was standing before the King and Queen in court, in chains with a soldier on each side of him. Since she saw no one else that she knew, and he was alone, Alice decided to talk to the knave.

She approached him and, in order to start the conversation, said, "You wouldn't remember me, but years ago I was at your trial for stealing the tarts. How did that ever come out anyway?"

The question produced an immediate outburst from the knave. "It was a gross miscarriage of justice."

"You mean," Alice asked, "that you feel you were convicted of a crime you did not commit?"

"I mean," said the knave, "that the sentence handed out was the cruelest, most sadistic punishment ever devised. The most barbaric tortures of the foulest tyrants in all recorded history are trifling compared to it."



As the knave continued to fulminate about the cruelty of the punishment which he had suffered, Alice became increasingly curious to know what it was, but his tirade gave no clue to its nature. "At least," she thought, "they did not cut off his head, which is what I would have expected." The knave seemed to be physically healthy. In fact, except for being slightly dog-eared about the corners, he was quite unchanged from when Alice had seen him many years before. She wondered if the punishment was something which could not be mentioned in polite company, but finally she summoned up the courage to ask.

"Don't you know?" the knave responded. "My punishment was to be exiled to this place for the rest of my natural life. Do you think I would stay here for one minute if I didn't have to?"

"Oh," said Alice, quite surprised. "I understand, of course, that it is hard to be banished from one's home, never to see it again, but this doesn't seem like such a bad place. As a matter of fact, it seems better than the place you came from, as I remember it."

"Well, they say there is no accounting for tastes," replied the knave, "but I would rather be in the deepest dungeon than in this place. At least in a dungeon I would have some peace and quiet. Here all they do is argue incessantly about the law. I have yet to find anyone, in all the years I have been here, who can utter three consecutive words on any other subject. I am gradually dying of boredom, mixed with the emotional torture of having to listen day in and day out to their constant disputation. One can't even say good morning around here without running the risk of some sort of an argument. Nobody will ever convince me that I have not suffered the cruelest, most unusual punishment that it was anyone's misfortune ever to have imposed upon him."

The knave's harangue was interrupted by a herald,

announcing the latest arrival. "His honor, Humpty Dumpty, Lord Chief Justice of Jurisprudencia," the herald cried.

"Here comes the biggest, most excruciating bore of them all," the knave exclaimed, with pain clearly showing in his voice. "He'll head right for us, I'll wager. He sees to it that my torture never lets up."

The knave's prediction proved to be accurate. The Chief Justice spotted Alice and the knave, who were standing near the doorway, waved to them, and approached.

"So nice to see you again, young lady," said Humpty Dumpty, taking Alice's hand and squeezing it. He then nodded to the knave and added, "And good evening to you, sir felon."

The knave responded coolly. "As you know, I have been studying law quite a bit since my involuntary sojourn in your kingdom. Not that I've had much choice, since there is nothing else to talk about here. While I would hardly claim to match your legal scholarship, it seems to me that taking a couple of tarts could hardly be considered a felony. Therefore, I wish you wouldn't call me 'sir felon'."

Humpty Dumpty smiled and appeared to ignore the knave's hostility. "According to the better view," he said, "the degree of a crime, whether felony or misdemeanor, is determined by the punishment which the law provides for it. In your case, the punishment decreed was banishment. Now, I admit that banishment is a difficult punishment to classify, since our law doesn't recognize it as a punishment for crime at all. However, most nations which did punish by banishment, the ancient Greeks for example, considered it one of the most serious of all penalties. Therefore, I would have to say that your crime was a felony."

"Your law doesn't recognize banishment," the knave replied, "because to be banished from this place would be no punishment at all. In truth, I can think of no reward I would rather have conferred upon me."

The Chief Justice partially turned his back on the knave and addressed Alice alone. "You must pay him no mind, my dear. He's really not a bad fellow. He just enjoys provoking us, and like so many convicted criminals, his imagined sense of the injustice done to him is obsessive. It's hard to tell in these cases whether the grievances are real or contrived."

"I was at his trial, you know," said Alice. "It really was a travesty; at least it seemed that way to me."

"How very interesting!" Humpty Dumpty exclaimed. "I've often wondered what it was really like. Please tell me all about it."

The knave, who had been listening to this exchange, almost shouted, "I've told you all about it dozens of times. Of course, not being an accomplished liar, or lawyer as you prefer to say it here, like the rest of you, I'm not believed."

Humpty Dumpty ignored this outburst. "Do tell me," he continued, "was the indictment really in verse?"

"Yes, it was," said Alice. "It was read by a white rabbit."

"The indictment was read out at the trial," said the Chief Justice. "That sounds regular and proper enough to me. What happened next?"

"I don't remember it all," Alice responded. "But I do remember that the Queen kept saying, 'off with his head' even before the trial had hardly begun."

"That could be quite prejudicial," Humpty Dumpty said, thoughtfully. "I assume that the judge ejected her from the courtroom."

"Oh no," Alice replied. "The King and Queen were the judges."

"Two judges at a criminal trial," Humpty Dumpty remarked. "How very interesting! It does sound quite irregular by our standards. Still, one must be tolerant of foreign customs, however unusual. I suppose the important

question is, was fundamental justice achieved? How do you feel about that? Putting aside all peculiarities of procedure, would you say our friend had a fair trial?"

Alice thought for a moment. Finally she answered, "I wasn't there to the end, of course. However, the part I did see seemed to me to be very strange, but then I'm not experienced in these matters."

"Well, you already told us that the accusation was read in open court," said the Chief Justice. "We therefore know that the accused was advised of the charges against him. That's one element of a fair trial. Was he present to hear the evidence against him? That's point number two."

Alice replied, "He was present the whole time that I was."

"Splendid," said Humpty Dumpty, smiling. "Obviously, things were better than I'd been led to believe. I assume, since he was present throughout, that he had the opportunity to cross-examine witnesses and offer evidence on his own behalf."

"I really couldn't say," Alice answered. "I don't recall anything like that, but then I left before it was over, as I already told you."

The knave tried to interrupt, but the Chief Justice silenced him with a wave of the hand and the remark, "I'm trying to get an objective account now. We'll hear from you in due course."

"The next question should be," Humpty Dumpty continued, "was there an unbiased trier of fact? You mentioned that their majesties presided on the bench, which is a bad sign. But what about the jury? I assume that there was a jury."

"Oh, yes," said Alice. "There was a jury. They seemed to be thoroughly confused by everything, even more so than I, but I suppose they were unbiased."

"Capital!" Humpty Dumpty exclaimed. "There was

an impartial jury. Confusion on the part of the jury is of course natural. However, if they were unbiased, then they were capable of rendering a fair verdict, provided, of course, that they were properly instructed. What kinds of instructions were given to the jury?"

"I remember the King telling the jury to write certain things down, because they were important," Alice responded. "Is that what you mean by an instruction? And then, of course, the Queen kept saying, 'off with his head'. I suppose that is some sort of instruction."

"It sounds as if the King was trying to do a conscientious job of instructing the jury," the Chief Justice remarked. "Perhaps his efforts sufficiently overcame whatever prejudice was created by the Queen's statements."

"I don't think the jury understood his instructions," Alice commented.

Humpty Dumpty smiled and winked at her. "I'll let you in on a little secret, my dear. Frankly, I suspect that is true in most cases. While I would not care to be quoted publicly, I must say that if I had to be satisfied in every case that the jury understood the instructions, our jails would be empty."

Alice thought that she was not really explaining things at all well. However, the more she explained, the more the picture seemed to come out all wrong. Finally, in desperation, she almost shouted out, "You're just concerned with all the silly formalities. Don't you care whether he was innocent or guilty?"

The knave attempted again to speak, getting out the words, "I can't stand it any longer," before Humpty Dumpty stopped him with a booming cry of "Silence! We have been hearing from you about this for years and years. I am not finished yet with this witness." He continued, turning again to Alice and speaking in his normal voice: "You may be right. What was the evidence of his guilt?"

"Well," Alice said, with some hesitation, as she was having considerable difficulty remembering, "there really wasn't much proof of anything. Oh, I do remember that the tray of tarts was on a table in the front. I suppose that means something."

"Aha, the *corpus delicti*," said Humpty Dumpty. "How did the officers of the law obtain possession of it from the accused? That is generally critical in these cases."

"Nothing was ever said about that," Alice answered.

"You mean," Humpty Dumpty asked, sounding quite incredulous, "that the defendant did not move to suppress that evidence? I find that hard to believe."

"All that was suppressed," Alice said, "was a guinea pig in the audience; they put the poor thing in a bag and sat on him."

Alice noticed that she was beginning to get very drowsy and could hardly keep her eyes open. She tried to keep the lids from shutting completely by staring very hard at the Chief Justice and concentrating on his face. The longer she did this, the more his head looked to her like an egg and the less it appeared to be the head of a real person.

Humpty Dumpty laughed. "How very amusing. What I was referring to, however, was the motion that defendants almost invariably make in these cases to suppress evidence which has been taken from them by law enforcement officers, on the ground that the search or seizure which produced the evidence was unlawful. Competent counsel would be sure to make such a motion in every case, whether it has any merit or not. Perhaps our friend's trial wasn't as fair as I thought. He was represented by counsel, wasn't he?"

Alice shut her eyes, which wasn't very difficult, and tried to picture the knave's trial. She seemed to remember that, below the King and Queen, at the table on which the tray of tarts was placed, there were two figures in robes and

wigs. As she recalled, one of them looked very much like a parrot. She said, "I seem to remember two birds, parrots I believe—I never was very good at telling different kinds of birds, you know—but I don't remember either of them actually speaking."



"Did you say parrot?" Humpty Dumpty asked. "I have heard quite a number of counsel who sounded like parrots, but I don't recall seeing any that looked like a parrot. Certainly they must have said something. In my experience they usually say too much, but I can't imagine silent counsel. If you don't concentrate hard on what they say, you can forget it quite quickly, believe me."

Alice, as she heard this, was trying to get her eyes open again, but she found that the lids had become so heavy that all the strength she seemed to possess was insufficient to

raise them. She responded weakly to Humpty Dumpty's query, saying, "No, I really can't recall anything."

As the Chief Justice's words gradually tapered off into an unintelligible mumble, she heard him say "incompetence of counsel", after which there was complete silence.

When she regained consciousness, she was seated again in the armchair facing the television set. The picture had disappeared, and there was no sound coming from the set, except for a low static noise. It was the middle of the night.

NOTES

If any reader is interested in comparing the laws of Jurisprudencia with the laws of the United States of America, past or present, the following references may be helpful.

Chapter I

The deed from the Duke of Corpus to the Baron of Baratry is a close paraphrase of the original deed to the lot on which the author's house stands, recorded in 1939 in the official records of Marin County, California. The knight's "shortest possible way of writing" the same deed is suggested by California Civil Code Section 1092.

Chapter II

Humpty Dumpty's lecture on semantics in the case of the King vs. Jabberwock and Bandersnatch echoes the opinion by Chief Justice Traynor in *Pacific Gas & Electric Co. v. Thomas (G.W.) Drayage & Rigging Co.*, 69 Cal.2d 33, 36-40, 69 Cal.Rptr. 561, 442 P.2d 641 (1968). For the "traditional" rule advocated by Tweedledum, see *Re McFerren's Estate*, 365 Pa. 490, 76 A.2d 759 (1950), citing *In Weidman's Appeal*, 2 Walker 359, 42 Leg. Int. 338 (Pa. 1885).

Chapter III

Humpty Dumpty's views of the two kinds of laws were borrowed from a speech by Judge Learned Hand, found in Proceedings of a Special Session of the United States Court of Appeals for the Second Circuit to Commemorate Fifty Years of Federal Judicial Service by the Honorable Learned Hand, printed in vol. 264 of Federal Reporter 2nd (1959). The "mists of metaphor" phrase comes from Judge Cardozo, generally one of the most quotable of American jurists, in *Berkey v. Third Avenue Railway Co.*, 244 N.Y. 84, 155 N.E. 58 (1926).

The literature on the concept of a corporation as a "person" is vast. One interesting note is the Harvard Law Review's citation of Humpty Dumpty as authority for this metaphor: "Many a German scholar has resolved like Humpty Dumpty, that words shall not master *him*, and having thus impressed upon the word 'person' his own meaning he demonstrates with absolute finality that the corporate entity is really a 'person' in his sense of the word." Machen, "Corporate Personality", 24 *Harvard Law Rev.* 253, 262 (1911).

The reason "many a man incorporates his business" may be found in *Elenkreig v. Seebrecht*, 238 N.Y. 254, 144 N.E. 519, 521 (1924). The conditions under which the separate personality of a corporation (unicorn) may be disregarded are explained in *Automotriz del Golfo de California v. Resnick*, 47 Cal.2d 792, 306 P.2d 1 (1957).

Chapter IV

Chief Justice Humpty Dumpty's criticisms of the rules for cross-examining a "character" witness are those of Justice Jackson in *Michelson v. United States*, 355 U.S. 469 (1948).

Chapter V

Humpty Dumpty's characterization of the rules of the "game" is similar to discussion in *Lucas v. Ham*, 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685 (1961), quoting Gray, *The Rule Against Perpetuities* (4th ed., 1942), p. xi. The Rule has since been considerably modified in California. The Duke of Mortmain's will resembles the will found to be valid in *Snyder's Estate v. Denit*, 195 Md. 81, 72 A.2d 757 (1950). The bequest to the turtle is unique to Jurisprudencia.

Chapter VI

For the American view of the minimum procedural elements necessary to achieve "fundamental justice" see *Goldberg v. Kelly*, 397 U.S. 254 (1970). The views of some American judges concerning juries' understanding of judicial instructions are expressed in *Rangel v. Bado-lato*, 133 Cal.App.2d 269, 284 P.2d 76 (1955) and *Wekman v. Howard Zink Corp.*, 97 Cal.App.2d 418 428-31, 218 P.2d 43 (1950) (concurring opinion).